EQUALITY THROUGH LEGISLATIONS AND JUDICIAL PRONOUNCEMENTS WITH REFERENCE TO THE SCHEDULED CASTES AND BACKWARD CLASSES: A STUDY IN SOCIO-LEGAL PERSPECTIVE

ABSTRACT
THESIS

SUBMITTED FOR THE AWARD OF THE DEGREE OF

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IN

LAW

BY

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ABSTRACT

The father of the Indian Constitution had to face a complicated task in devising suitable safeguards to satisfy the needs and aspirations of various sectors, groups and class or people. Our national charter contains to each individual .Inequality breeds many social and economic problems and these problems are creating hindrance in the way of progress of the Scheduled Castes and backward Classes.

The Constitution of India guarantees equality of rights and opportunities to women in reality, it remains mostly on paper and only glaring inequalities in education, health, social status, and employment It is noteworthy that the Scheduled Castes and other backward classes who were treated as untouchables have, in particular been, made the victim of social, economic and religious inequalities. Since the concept of 'social justice' has been adopted by the Constitution of India to be one of the guiding factors to translate the concepts of 'justice, equality, liberty and fraternity. The Constitution of India being the supreme law of the land ensures equality and equal protection of laws to all. It also ensures equal opportunity. But the status of general and Scheduled Caste and backward classes in particular has become identical with that of a commodity or property of man, even today, Women are discriminated of income, consumption, assets and education.

Most of the people encountered by the Scheduled Castes and backward classes spring from lack of education, poor and rate of work participation, hence only these two components are considered to highlight the Scheduled Caste/ Scheduled Tribe could not develop their

children properly. They could not educate them properly. Inferiority complex is developed among them and they are incapable to build confidence in themselves. Their Latent capacity is not used properly for National development. Scheduled Caste and backward classes mostly perform agricultural jobs as labourers. Their low social status, illiteracy, unskill, force them to undertake manual jobs. The Scheduled Castes can be grouped into four categories of workers, viz. Domestic and home workers doing household work. Cooking, washing, cleaning home, looking after children and serving as workers in agricultural and cottage industries.

Scheduled Caste and backward classes access to basic goods and services and to productive assets, the right to sell their own labours is contingent in a way men's are not. It is embedded in the interlocking religious, economic and kinship structure. To complete this research project various legislative provisions dealing with the principle of equality and judicial pronouncements by the Supreme Court and different High Courts disposing off conflicts revolving with the principle of quality getting start from the Constitution of India, the supreme law of the land relevant legislations enacted by Union Govt. of India and different states enacted legislations with reference to the scheduled caste and backward classes especially in post- independent India are studied critically and objectively.

Case comments attempted by scholars, jurists, lawyers judges, legal analysis and by media persons are studied critically to get the real spirit with reference to the principle of equality evolved by the Constitution with the support by the state machinery.

To facilitate the research venture, the researcher classifies this research into different chapters. In Chapter I, Hindu caste system is analyzed the place of *shudra* Backward classes which is analyzed in historical perspective along with *chaturvarna* system and its religious basis. Chapter II deals with the principle of equality as conceived by the Constitution of India dealing with the Scheduled Castes and backward classes. The principle of equality is discussed with reference to the provisions of Constituent Assembly debates referring to the learned members and chairman of different committees and the provisions as enshrined in the Constitution of India. Under Chapter III, concept of equality with reference to the Scheduled Castes is analyzed critically. The concept of equality with reference to backward classes is analyzed in chapter IV. Different legislations conceived and enacted by the Parliament of India along with different state Legislatures with reference to Scheduled Caste and Backward Classes are evaluated critically under Chapter V. Selected cases of different High Courts and Supreme Court are analyze to establish the equality through judicial pronouncements of Scheduled Castes and Backward classes under Chapter VI. Under Chapter VII, the working of the National Commission of the Scheduled Caste and backward classes reveal that the makers of Constitution of India had a very devoted concern for the betterment of the Scheduled Castes and backward classes. Under this chapter, the working of the National Commission of the Scheduled Castes and Scheduled Tribes are analyzed critically. Under Chapter VIII, the Status of Human Rights of the Scheduled Castes and Backward Classes in contemporary perspective are studied thoroughly. Role of National Commission of Human Rights in promoting the doctrine of equality in case of the Scheduled Castes and backward classes are analyzed and studied

critically under Chapter IX. Role of Social reformers like Rajaram Mohan Roy, Ishwarchand Vidyasager, Keshav Chandra sen, Mahatma Phule, Dr. B.R. Ambedkar, Gopal Krishna Gokhle, Pandita Rama Bai, Dhondo Keshav Karve etc. worked for bringing about equality in the society enhancing the social, economic, legal, educational political status through legal course are studied in Chapter X.

Under caption Conclusion and Suggestions, the academic exercise and research venture have been done pinpointing the outcome of the study along with the solution within the framework of this study.

Scheduled Caste and backward classes face various problems and lead miserable life owing to lack of education and the nature of their work. Here an attempt is made to suggest measures as suggested by different Commissions and individual researchers to inhalation of illiteracy and improve their working conditions and socio- economic status. Having delimited regions of concentration of illiteracy and agricultural wage earners and castes with illiteracy and high proportion of agricultural labours, a phased programme should be chalked out to remove illiteracy and improve economic conditions of labours. A priority is given to the areas and castes with high illiteracy and high agricultural labour force.

The constructive and productive life is to be imparted through education among Scheduled Castes and backward classes as it will help to make aware of their rights, constitutional provisions and relevant laws. It will also help them to organize themselves. Education is the potent instrument that develops scientific thinking and eliminates superstition which is one of the main hindrances in the progress and development of the Scheduled Castes, and other backward classes. Educated women can

educate their children properly and take care of them properly. Education will help to build confidence among the Scheduled castes/ scheduled Castes and remove inferiority complex and uplift them in all spheres of life so that they can fight against molestation, suppression and oppressions.

For the purpose of this study, the leading commentaries attempted by the noted legal and sociological luminaries on the Scheduled Castes and Backward Classes are explained in historical perspective. Relevant volumes of Constituent Assembly Debates and two National Commissions, Dr. Ambedkar's writing and speeches, the different books devoted to Dr. Ambedkar's legal philosophy were analyzed. To examine reservation matter under Constitution of India for Backward classes and Scheduled Castes and Scheduled Tribes, relevant judicial pronouncements are critically studied.

Dr. Ambedkar excelled himself during British regime as the champion of the cause of backward class especially the Scheduled Castes and Scheduled Tribes. He fought to ameliorate their position. British regime recognized his efforts and extended opportunity to him for advocating the cause of the Scheduled Castes. He appeared before numerous Commissions and Committees to advance his plea for improving the lots of the Scheduled Castes. He was invited to Round Table Conferences in London wherein he succeeded in getting the British regime convinced that for improving the overall conditions of the depressed classes by giving to them the facility of reservation, through this move of was opposed by Mahatma Gandhi and ultimately he preferred to go on fast unto death. By this move of Mahatma Gandhi, the Indian Nation of British regime witnessed unprecedented unrest. Dr. Ambedkar was put

under great pressure and ultimately Poona Pact came into being through this move through the reservation policy was retained, but in a diluted form. Freedom movement with the passage of time got intensity and ultimately Constitution making exercise began.

The Constituent Assembly came into being for debating and drafting the provisions of the Constitution of India. Dr. Ambedkar had already got recognition by virtue of all these qualities, Mahatma Gandhi and along with other starwards were much impressed by Dr. Ambedkar. He was invited to the Constituent Assembly and was entrusted to draft the provisions of the Constitution of India in the capacity of the Chairman of the Drafting Committee. He expressed his satisfaction to be in the Constituent Assembly as he would be getting opportunity to provide safeguards to the backward class specially the Scheduled Castes and Scheduled Tribes. The Constitution of India by which they could improve their position and brought up to the level to the rest people of India sharing the fruits of equality. Remaining in Constituent Assembly, he succeeded in getting the Constitution of India ensuring numerous safeguards and protection.

This research venture reveals that to which extent backward classes especially Scheduled Castes have been the beneficiary of reservation policy. Also, this study unfolds that by virtue of reservation policy oppressed sections of our society especially Scheduled Castes and Scheduled Tribes have come up to the level of other sections of the society. This study reveals that by virtue of reservation policy, oppressed classes of our society have been able to come forward in the area of education, job and also in legislative houses. By this policy, researcher ventures to reveal that ugly impact of Hindu rigid caste

system has been changed considerably and our nation is moving forward to advance the target of casteless society. This study analyses the root cause of rigid caste system within the framework of Hindu religion on the basis of religious literature. Dr. Ambedkar's approach to Hindu Caste system has been discussed thoroughly

It was his considered view that the plight of oppressed segments of Indian society is based on the Hindu rigid Caste system. He denounced it as an evil. He revolted against it on the issue of untouchability, Dr.Ambedkar's thesis has been scrutinized. Dr. Ambedkar's approach towards reservation policy is studied meticulously. Study reveals that he was not of the view that reservation facility should remain continuing phenomena rather its relevance should be monitored from time to time.

The universe of this study is confined to the Constitutional safeguards accorded to in favour of backward class especially Scheduled Castes in India. Actual position of Scheduled Castes and backward classes is determined in Hindu social order. Merit of Constituent Assembly Debate focused on the plightful situation of the Scheduled Castes and Scheduled Tribes, reservation policy as tool for improving the lots of backward class, analysis of the Constitutional position dealing with backward classes with reference to the Scheduled Castes and Scheduled Tribes, protections to the backward class with reference to the Scheduled Castes and Scheduled Tribes and lastly, judicial response to the weaker sections with reference to Scheduled Castes constitute the universe of this study.

The nature of this research is unique one in post-independent India as it attempts first time to analyze the role of Dr. Ambedkar who is

considered to be champion of oppressed segments of Indian society focusing on his contributions through Constituent Assembly Debates going through the relevant constitutional provisions devoted to safeguards of the backward classes specially the Scheduled Castes and Scheduled Tribes reacting on Hindu rigid caste system which was held to be responsible for the degradation of backward classes in India.

The outcome of study, in the humble estimation of researcher, shall not only be an addition of fresh chapter in post independent India for analyzing the contributions of Dr. Ambedkar as a champion of social justice and for overall reform of the Scheduled Castes and other backward classes within the framework of the Constitutional Scheme wherein he succeeded in incorporating numerous provisions for their overall welfare. Different legislative provision and Judicial pronouncements of representative nature have been analyzed with the sole view to assess how these have been successful in ensuring and promoting the numerous safeguards for the betterment of the backward class specially Scheduled Castes and other backward classes translating into action the lofty vision and pragmatic mission of Dr. Ambedkar. The Conclusion and suggestions of this study would be useful for the policy maker and for those are associated with numerous programs and scheme designed to ensure socio-legal welfare of the backward classes especially with reference to the scheduled castes and other backward classes.

Under the caption of bibliography and references appended to this thesis, rich source material is available that can be utilized by subsequent researchers to accomplish their study and research in such and other allied areas. This study provides source material on the basis

of objective study to government being the custodian of the welfare state to improve further the existing safeguards making more realistic and responsive measures ensuring the betterment of weaker sections specially Scheduled Castes and other backward classes in India upholding the philosophy of egalitarianism of Dr. Ambedkar to ensure the fruits of equality to every citizen irrespective of caste, religion, creed, colour and place of birth consideration

The Constitution, on the other hand, aims at to establish a more equal and just social order .The Constitution has established the supremacy of law. The social order is what the organic law preserves. It prohibits continuation of certain institutions and practices, which are contrary to the establishment of just and equitable social order. All agencies of state, including Courts, are to translate the basic plan of the Constitution in concrete measures. Prohibition of discrimination on the ground of Caste imposed by Article 14, 15, and 16, of the Constitution and its enforcement for the 63 years has hardy led to the establishment of a Casteless Society or to any significant step in that direction. In spite of abolition of untouchability by Article 17, the dragon is still at large, infact, atrocities on the Harijans are on increase.

The hierarchical social order was created over centuries with a view to preserve the monopoly of social status, by the higher caste Hindus. As a result, property, education, freedom, justice progress and prosperity were denied to the people of lower castes. Down-trodden in the Hindu society were stripped of the even equitable opportunities for political, social, economic and educational development. Opportunities of growth and development were controlled and usurped by the higher castes with the result that the downtrodden were deprived and discriminated,

symbolizing a powerful, institutionalized pattern of exploitation and suppression of the weak by the strong. In the Indian stratification of society, the Scheduled Castes and other backward classes constitute an important stratum, not because they form about 15 percent of Indian's population, but because they occupy a unique position as untouchables.

The main objective of this special concession is that this background and suppressed segment of Indian population should be emancipated at the accelerated pace to catch them up with the overall pace of national development. It aims at accomplishing the object of historical restitution or reparation to effect the systematic and cumulative deprivations suffered by the lower castes, is an exceptional and temporary measure designed to be used for the purpose of mitigating inequalities between communities. It is however the matter of great dissatisfaction that period of reservation has been repeatedly extended four times. But still is seen these classes of people are at the same position. This is because the social, economic and political inequalities have not yet been removed and they need reservation for same time more with a view to enabling them to come on par with the rest of the nation.

What is true today the lower layers of the people of scheduled castes are where they were two hundred years ago bearing a few who have no monopolized all the benefits designed for these poor brethren. The general opinion is that the benefits of reservation policy by and large have been snatched away by the top creamy layer of the scheduled castes, thus keeping the weakest of the weak always weak and living the fortunate layers to consume the whole cake. The evil of caste system has persisted for several thousand years in Hindu society. It is still prevalent in various forms throughout the country especially in the villages and

more particularly in South India. The scheduled caste bridegrooms are not permitted to ride on mares in villages, Dalit can not even sit on their own charpoys, when person of others castes pass by. These persons are not being permitted to draw water from the common wells and in some cases even from hand- pumps. In many tea shops and Dhabas, separate crockery is used for serving these people. Barbers refuse to cut the hair of these people Often there are also reports of gang rape, public auction of women, urinating in the mouth of women, compelling boys to eat night soil, parading naked women in the villages, mass killing and destroying the houses and properties of Scheduled Castes and Scheduled Tribes by the high caste persons. Such instances are numerous and reflect the deep stated prejudice of caste system still dwelling in the hearts of vested persons. This tendency has alienated Dalits and has the potential of turning this hatred into militancy and fissiparous tendencies. No nation can progress if it is divided into countless groups and does not device equality to all persons.

Noticing the evils of prevailing caste system and its impact on suppressed human being prompted founding fathers of the Constitution of India to create an egalitarian society where justice: Social, economic and political equality of status and opportunity may be available to every one irrespective of caste, creed, religion and place of birth. No doubt, India has got political freedom and has political democracy but it must be the concern of every one that real freedom can not be cherished without attainment of the social and economic democracy. It is unfortunate that the Indian society is sharply divided into various casts and sub-cases and free intercourse in obstacled due to rigidly and

segregation and division of the society based on rigid caste considerations

History is evidence to establish that so many personalities worked to wipe out the evil influence of the caste system and to give rightful place to the suppressed section of the society who were sufferer due to rigidity of the caste system. Mahatma Gandhi, the Father of Nation happened to be on forefront but it was his conviction that by maintenance of Hindu caste system on status quo basis, the problem of ' untouchables' could be conquered successfully, but Dr. B.R. Ambedkar who emerged as a revolutionary leader approached the problem of the fate of suppressed human being from different angle. In estimation of Dr. Ambedkar, caste is a barrier to social progress and individual's advancement of the personality.

Dr. Ambedkar was very radical on the issue of Hindu religion and he appealed to his followers not to depend upon God or superman for the abolition of untouchbility, For the salvation of' untouchbility, he advocated for political power. He ridiculed that the pilgrimages and observance of fasts would not be able to save the' untouchbles' from starvation. He tried to impress upon that 'bread was better than the worship of God' through different fora he voiced his conviction for the advancement of the 'untouachbles' and conflict of approaches between him and Mahatma Gandhi emerged sharply.

Dr. Ambedkar got opportunity to associate himself in Constitution making process. In his own capacity, he exhausted his positive efforts at his command for the betterment of the 'untouchables' through

constituent Assembly wherein he enjoyed the position of the chairmanship of the drafting committee of the Constitution of India.

The preamble of the Constitution of India outlines the objectives to be achieved. It conveys the intention of the makers to reconstruct the social order based on just and egalitarian values. Now 'untouchability' stands abolished constitutionally and untouchables are sanctioned equal rights. Since untouchables happened to be socially and educationally backward class, hence, there is a provision for adopting beneficial provision for the betterment of suppressed humanity. Through affirmative action which is covered under the doctrine of protective discrimination. .Besides the 'freedom of expression' and 'personal liberty' there is guarantee for religious, cultural and educational rights guaranteed to everyone including the Scheduled Castes and backward classes.

Article 340 of the Constitution of India empowers the President of India to appoint a Commission to investigate the condition of socially and educationally backward classes and the difficulties under which they labour and to recommend steps to improve their conditions. In addition to the variety of Constitutional provisions to prevent the Commission of the offences and atrocities against the Scheduled Castes and Scheduled Tribes, the Parliament has enacted two important legislations, (1) The Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. These two legislative ventures of the government of India are to accord special protection for the overall betterment of the Scheduled Castes and Scheduled Tribes. .

An attempt is also made to find out the extent of progress which these people have been able to achieve by virtue of Constitutional safeguards in due course of time. The study reveals that Social Justice is the signature tune of the Constitution of India. This belief has paramount position in our society because struggle for freedom has not been only, political but economical and Sociological too. Mahatma Gandhi, J.L. Nehru, Dr. B.R Ambedkar and other great Indian Leaders visualized the imperatives of Independence in fulfillment of Social, Economic and Political equilibrium. Running right through the warp and woof of the countries' fundamental Laws, We find great inclinations for the betterment of backward classes. The masses have suffered great Social injustice. The curtain of poverty is too strong and if peaceful transformation of the nation into an egalitarian policy is not achieved, there would be disruptions, which is bound to destroy the peace and progress of our country.

The backward classes shall be salvaged and a better deal be given so as to inject justice and good conscience into an Indian way of life. The only way for a backward community to come forward on its dynamic march towards socialism is the adherence to the principle of the rule of law. The fighters of the Indian freedom and the Architects of India constantly reminded the nation that the route to victory laid along the path of rule of law. The overall backwardness of the Scheduled Castes and Scheduled Tribes and other backward class of our society were presumed for the safeguard of their interests by providing a special protection under the doctrine of protective discrimination. The relevant provisions of the Constitution of India devoted for the protections of the backward class can not be translated into action till the moment our

executive and judicial wing of the state is not sincerely committed. The role of Judiciary in context of interpreting of the Constitutional provisions meant for the protection of the backward class reveals that our judicial system is alive to its job The new dimensions of Constitutional protection of the backward class satisfying the end of equality.

The Constitution recognizes certain categories of backward classes based on social, economic and political criteria, Secondly, is based on social outlook and thirdly, the weakness as weaker is based on economic factors which governs the relation between a strong employer and weak workers, Politically are those who are numerically in minority and unable to assert their constitutional rights against majority. The Scheduled castes, Scheduled Tribes, women and other weaker sections need special care and protection to utilize their position to that of socially, educationally and economically forward communities in terms of the constitutional mandate.

No doubt, various schemes and programmes meant for the betterment of backward classes to satisfy the spirit of the doctrine of equality have to be implemented through the Legislative and Executive organs of state, nevertheless, the judiciary has to work as a watch dog and it has to weight the various competing interests for keeping proper balance. The Concept of equality implies the absence any privilege by reason of birth, creed, sex and colour in favour of any individual or class. The philosophy introduced in Article 14 of the Constitution constitutes the basic feature which can not be diluted by any amendment of the constitution according to the procedure as laid down under Article 368

of the Constitution. However reasonable classification is allowed to satisfy the constitutional objectives.

Article 15 and 16 rules out discrimination on the ground of religion, race, caste etc. However, provides certain provisions for preferential treatment under the doctrine of protective discrimination to depressed classes like women, children, backward classes, Scheduled Castes and Scheduled Tribes have been secured in order to mitigate the strict adherence to the equality rule. These two Articles provide two sets of concessions of protective discriminatory troops Article 15 allows preferential treatment in favour of socially and educationally backward classes or for the Scheduled castes and Scheduled Tribes whereas Article 16 speaks in favour backward classes who are in opinion of the state are not adequately represented in the services under the command of the state.

The study establishes that judiciary is willing to keep proper balance between the interest of the scheduled caste sided by social interest in disallowing such preferential treatments which results into development in class interest in favour of the ' creamy layers' of such committees. It also clarifies that if the Scheduled Castes have attained high status they should be kept out side the pale of the protective discrimination. The Judiciary has usurped the power of policy consideration as to whom preferential treatment be given and ruled that the religion and caste are constitutionally prohibited criteria for discrimination, can not the basis of the Governmental policies. The Judiciary is correct in hammering on the point that Government protective discrimination policy should not be based on excessive distinction of protective discrimination may lead to decline the educational standards and administrative efficiency. Thus,

judiciary has always been cautious on balancing role in safeguarding the interest of backward classes.

This rigid caste system which is responsible for the creation of the so called untouchables. Scheduled castes and Scheduled Tribes prompted Dr. Ambedkar to stand and fight out for the egalitarian and casteless society. The so called untouchables Scheduled Castes, Scheduled tribes and other backward classes of society form the lowest strata of the Hindu society while the Brahmins were treated to be a symbol of religious superiority and intellectualism. Dr. Ambedkar came forward with an aim to create society where in caste consideration must have gone to its oblivion. According to him, caste is a barrier to social progress and the other individual advancement of the freedom.

Dr. Ambedkar was the man primarily responsible for bringing about a social revolution to secure human dignity for the oppressed Indians whose wretched life as untouchables that untouchability and discrimination are yet to be fully wiped out despite numerous concrete steps taken by the Government of India. Indeed Dr. Ambedkar's multifaceted genius was highly evident throughout his cheered life. The great intellectual thinker and philosopher, a jurist par excellence and a prolific writer, he was the prime architect of the Constitution as chairman of the Drafting Committee. Dr. Ambedkar, was the leader of the oppressed classes of India. He taught the oppressed to fight all kind of operations and make them realize the power of unity. Being born in an untouchable family, Dr. Ambedkar had first hand experience of the subjected to utter humiliation ever since he was born till later in many stages of his life, only to harden his determination to destroy that social system which perpetuated this cruelty. The long and heroic struggle

which he undertook along with many of his brothers. When India became free brought so many safeguards in favour of weaker sections specially, the Scheduled Caste and Scheduled tribe, also banned untouchability and brought the downtrodden at par with other sections of the society, of course, the Constitution of India was hailed all over the world as a 'new charter of Human Rights'.

The preamble of the Constitution of India ensures its quest for social, economic and political justice to every citizen of India and also offers special provision for the socially and educationally backward classes. It offers special treatment for neglected and oppressed segment of Indian society especially the Scheduled Castes and Scheduled Tribes and other backward classes. It provides mechanism to accord protection in favor of such segment of the society by the adoption of the doctrine of protective discrimination'. The Constitutional assurance for the creation of classless society befitting equality and human dignity is shattered by the rampant practices of untouchbility and forced labour system. Such practice denies the Constitutional mandate of equality before law & equal protection to all.

Under Article 17 the untouchability is abolished and its practice in any form is forbidden. The Constitution of India declares that laws have been enacted to enforce any disability arising out of such disability and to punish those who create such disability. Study reveals that the problem of untouchability is of historical origin which has already been dealt in detail despite the efforts made by great men like Mahatma Gandhi, Dr. Ambedkar and Ramanujacharya who focused public opinion in this regard to remove all social disabilities of the Harijans. The Harijans continued to live apart from the four castes of the Hindus.

To improve their lot even before the commencement of the Constitution of India various legislative measures were introduced, but could not improve their condition satisfactorily. By the abolition of untouchability, a social order was dreamt by the makers of the Constitution of India. The abolition of untouchability was made to prove the new pattern of social behaviour but the same was not achieved to the expectations of the framers of the Constitution. The scheduled Castes and Scheduled Tribes still remain poor, exploited and suggested to social, economic and political disabilities on the ground of untouchability. They have been denied even excess to drinking water and other places of public utility.

Since the Scheduled Castes and other backward classes belong to the socially and educationally backward classes of India, hence under the doctrine of 'protective discrimination', Government has been empowered to take special measures for enhancing their status. It is matter of some satisfaction that many people who could not obtain higher position in social life earlier, due socio- economic and political disabilities have now been able to get important positions, but still lot has to be done to give effect to the principle of equality. It is, therefore, imperative that efforts both private and public should be made to fulfill the intention of Dr. B.R.Ambedkar who is known crusader of social justice and Massiha of depressed humanity. Dr Ambedkar's cautious approach is echoed: "we have to safeguard two things, namely the principle of equality of opportunity and at the same time satisfy the demand of communities, which have not had so for representation in the state. Further Dr. Ambedkar warned that "neither of them should be allowed to eat up other. It is an open secret that upper caste Hindus

command economic heights, political power and key jobs in Government, however, contemporary trend establishes that backward classes and Dalit movement constitute a potent threat to them.

The Scheduled caste and backward classes are socially and educationally backward groups, have not been given what they deserve. Their position in regard to economic status remained basically unaltered. Without a revolutionary change, economic base, no real change can be made. The Union Government of India has admitted in the Gazette of India, dated August 7, 1989, that despite various measures to improve the conditions of the Scheduled Castes and Scheduled tribes, they are subjected to various offences, indignities, humiliations and harassment. No doubt, it appears that the union Government of India in terms of Constitutional mandate exhausted efforts to save the Scheduled Castes, Scheduled Tribes and other backward classes from humiliations, harassments and atrocities. In this regard two legislative steps namely. The Protection of Civil Rights Act, 1955 and the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 are noteworthy. The study reveals that these legislative measures could not improve their conditions because the concept of 'will' appears to be lacking on the part of those who are under obligation to implement them and also lackness of cautiousness regarding the responsibility on humanitarian ground for improving the status of suppressed humanity by the persons of upper caste. The subject is a very important one from the point of view of the entire Indian society but it is complex one too. We hope and trust that we will be able to find some reasonable solution for the problem soon, bearing in mind what Dr. Ambedkar said: "we have two safeguard namely, the principle of equality of opportunity and at the

same time satisfy the demand of communities which have not had so far representation in the state." Dr Ambedkar also warned that neither of them should be allowed to 'eat up' the other. It seems that no single test can be sufficient for delineating backwardness. Caste can not be made the sole basis of classification for reason that many sections of the Indian society do not recognize Castes in the conventional sense known to Hindu society

Article 340 of the Constitution makes it clear that Commssion can be appointed for investigating who are backward classes and it would be contrary to the letter and spirit of the Constitution if such Commission had made caste or religion the criterion for backwardness. Similarly, the test of occupation for determining "backwardness" presents many difficulties. In order to lift the Untouchables and the down- trodden people from the plight of social, economic and educational backwardness, Dr. Ambedkar wanted to incorporate sufficient safeguards in the Constitution. He insisted on the incorporation on the separate budget provision for promoting primary education amongst the children of the Scheduled Caste, Scheduled Tribes and the down-trodden people and also separate funds for promoting advanced education amongst them. An authority on public finance, Dr. Ambedkar maintained that expenditure on education of such people could be given priority on the revenue expenditure of the states. Coupled with this provision, Dr. Ambedkar mentioned that representation of the Dalits communities in the state and Central Governments should be maintained in accordance with their number, their needs and their importance. Such services as judiciary, police and revenue also should have an adequate quota from these communities

The demand for a separate electorate to ensure their representation in the legislatures and the local bodies is a matter which calls for a critical reassessment in the changed circumstances of today. Dr. Ambedkar's demand for statutory provision for Scheduled Castes and scheduled Tribes representation on the Central and state public Service Commissions has found fulfillment in the Constitution of India.

In order to free the members of the down- trodden from the tyranny and oppression of the upper Hindu Caste, Dr. Ambedkar demanded separate settlements for the former. This he felt would ensure their social and economic security which would reestablish them in society. The demand for separate settlements is not a demand for separate States but it is provide places of habitation to the down-trodden, which will be independent of the villages. The separate settlements calls for the establishment of a separate Commission duly empowered to provide financial assistance to the members of the downtrodden for their all-round progress and development.

It is a matter of regret that even now though not openly, mainly indulge in the same practices and the implementation of the laws made for the benefit to backward class is made difficulty by vested interests. In order to give relief to those who had suffered for centuries the adverse effect of Casteism and as a consequence who had been deprived of equal opportunities, the Constitution enacted Article 15(4) and Article 16(4) providing reservation in the matter of admission to educational institutions and the public services of the States as well as in the Union Public Service Commission of the Centre. It is matter of some satisfaction that owing to many measures– Legal, Social and political, many people, who owing to their birth, could not attain higher in social

life previously have now been able to get into important positions. But more still remains to be done to give effect to the principle of equality which runs through the Constitution as the golden thread. It is, therefore, necessary that all efforts– both private and public- should be made to fulfill the intention of Dr. Ambedkar being the founding father of the Constitution.

The Constitution of India is a living testimony to the greatness and vision of Dr. B.R. Ambedkar. His life was in era of great struggle against injustice and humiliates the Dalit by caste Hindus. He came out victoriously by giving all important rights to the oppressed in the Constitution of India. Inspite of all social hurdles in his way, Dr. Ambedkar rose to the greatest heights and occupied important and prestigious position in India. In fact, he came and lived like a sun and gave the light to Dalit who were living in darkness and state of slavery. He made them to realize their rights and safeguards which are incorporated in the Constitution of India. Dr. B.R. Ambedkar very well known that unless and until the reservation in jobs, legislature and education was accorded to Dalits, they would never be in a position to be equal partners in the administration of the country and they would remain oppressed forever. Dr. Ambedkar as a Chief Architect of the Constitution made social justice a founding faith and incorporated humanist provisions to elevate the level of the lowly Scheduled Castes and backward classes to make democracy viable on equal footing for all.

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Dedicated to
My (Late) Beloved
Parents

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CERTIFICATE

This is to certify that ***Miss. Chanda Bano Zaidi*** *has completed this Ph.D. thesis captioned:* ***"EQUALITY THROUGH LEGISLATIONS AND JUDICIAL PRONOUNCEMENTS WITH REFERENCE TO THE SCHEDULED CASTES AND BACKWARD CLASSES: A STUDY IN SOCIO-LEGAL PERSPECTIVE"*** *for the award of the Degree of Doctor of Philosophy in Law under my supervision.*

This is an original work and meaningful contribution to the existing legal knowledge. This is fit for submission for the award of the Degree of ***Doctor of Philosophy*** *in* ***Law.***

20/08/10

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(Miss Chanda Bano Zaidi)

INTRODUCTORY REMARKS

The father of Indian Constitution had to face a complicated task in devising suitable safeguards to meet the needs and aspirations of various groups and classes of people of Indian society. Our national character contains to each individual .Inequality breeds many social and economic problems and these problems are creating hindrance to liberations and development.Within women too, there is inequality, e.g. between Dalit and non-Dalit. The Constitution of India guarantees equality of rights and opportunities to women in reality, it remains mostly on paper and only and there is glaring inequalities in education, health, social status, and employment. But the status of general and Scheduled Caste/ Scheduled Tribes in particular has become identical with that of a commodity or property of man, even today, Women are discriminated of income, consumption, assets and education.

According to Dr. Ambedkar, "It is not that there are no merited persons in lower Castes but it is the Hindu religion which hammered this notion of inferiority in the lower Castes. Hindu society itself has been a loser in the bargain as merits of women and untouchables are lost." It is noteworthy that is women do not improve, then society a whole can not progress if only men progress. According to G.C Vippal, a nation does not prosper only on fertile soil, dense forests and ever flowing rivers. It is the healthy people who make a nation. A Society is made up of both men and women. If women are weak and exploited, it is not a healthy society. And if a society is not healthy, a nation can not progress and prosper.

Most of the people encountered by Scheduled Caste and backward classes spring from lack of education, and nature and rate of work participation, hence only these two components are considered to highlight the Scheduled Caste and backward classes can not develop their children properly. They can not educate them properly. Inferiority complex is developed among them and they are incapable to build confidence in themselves. Their Latent capacity is not used properly for National development. Scheduled Caste and backward classes mostly perform agricultural jobs as labourers. Their low social status, illiteracy, unskill, force them to undertake manual jobs. Scheduled Caste and other backward classes can be grouped into four categories of workers, viz. domestic and home workers doing household work, cooking, washing, cleaning home, looking after children and serving as workers in agricultural and cottage industries. Scheduled Caste and other backward classes have access to basic goods and services and to productive assets. The right to sell their own labours is contingent in a way men's are not. It is embedded in the interlocking religious, economic and kinship structure.

To complete this research project, various legislative provisions dealing with principles of equality and judicial pronouncements by the Supreme Court and different High Courts disposing off conflicts revolving with the principle of equality getting start from the Constitution of India, the supreme law of the land, relevant legislations enacted by Union Govt. of India and different states enacted legislations with reference to the scheduled Caste and backward classes especially in post- independent India. Critical scrutiny of legislations and judicial pronouncements dealing with the Scheduled Caste, backward classes have been made.

Case comments attempted by scholars, jurists, lawyers, judges, legal analyst and by media persons are studied critically to get the real spirit with reference to the principle of equality as evolved by the Constitution and supported by the state machinery.

To facilitate the research venture, the researcher classifies this research into different chapters. In Chapter I, Hindu caste system is analyzed the place of shudra Backward classes which is analyzed in historical perspective along with *chaturvarna* system and its religious basis. Chapter II deals with the principle of equality as conceived by the Constitution of India dealing with the Scheduled Castes and backward classes. The principle of equality is discussed with reference to the provisions of Constituent Assembly debates referring to the Learned members and chairman of different committees and the provisions as enshrined in the Constitution of India. Under Chapter III, concept of equality with reference to the Scheduled Castes is analyzed critically. The concept of equality with reference to backward classes is analyzed in chapter IV. Different legislations conceived and enacted by the Parliament of India along with different state Legislatures with reference to Scheduled Caste and Backward Classes are evaluated critically under Chapter V. Selected cases of different High Courts and Supreme Court are analyze to establish the equality through judicial pronouncements of Scheduled Castes and Backward classes under Chapter VI. Under Chapter VII, the working of the National Commission of the Scheduled Caste and backward classes reveal that the makers of Constitution of India had a very devoted concern for the betterment of the Scheduled Castes and backward classes. Under this chapter, the working of the National Commission of the Scheduled Castes and Scheduled Tribes are

analyzed critically. Under Chapter VIII, the Status of Human Rights of the Scheduled Castes and Backward Classes in contemporary perspective are studied thoroughly. Role of National Commission of Human Rights in promoting the doctrine of equality in case of the Scheduled Castes and backward classes are analyzed and studied critically under Chapter IX. Role of Social reformers like Rajaram Mohan Roy, Ishwarchand Vidyasager, Keshav Chandra sen, Mahatma Phule, Dr. B.R. Ambedkar, Gopal Krishna Gokhle, Pandita Rama Bai, Dhondo Keshav Karve etc. worked for bringing about equality in the society enhancing the social, economic, legal, educational political status through legal course are studied in Chapter X.

Under the caption conclusion and suggestion, the academic exercise and research venture have been done pinpointing the outcome of the study along with the solution which the researcher finds appropriate within the framework of this study.

Scheduled Caste and backward classes face various problems these and lead to miserable life owing to lack of education and nature of their work. Here an attempt is made to suggest and discuss measures suggested by different Commissions and individual researchers to inhalation of illiteracy and improve their working conditions and socio-economic status. Having delimited regions of concentration of illiteracy and agricultural wage earners with illiteracy and high proportion of agricultural labours, a phased programmed should be chalked out to remove illiteracy and improve economic conditions of labours. A priority be given to the areas and castes with high illiteracy and high agricultural labour force.

The constructive and productive life is to be imparted through education among Scheduled Castes and other backward classes as it will help to make them aware of their rights, constitutional provisions and relevant laws. It will also help them to organize themselves. Education is the potent instrument that develops scientific thinking and eliminates superstition which is one of the main hindrances of the progress and development of the Scheduled Castes and backward classes. Educated women can educate their children properly and take care of them properly. Education will help to build confidence among them and remove inferiority complex and uplift them in all spheres of life so that they can fight against molestation, suppression and oppressions.

Scheduled Castes and other backward classes' non-education is means of weakening, the inside/outside dichotomy and expanding opportunities for women. It gives new ways of thinking and new perspectives on existing information, situation, health, hygiene etc. The priority to educating them should be given top place in the planning. The policy should be designed so that better education, vocational, technical and professional trainings should be imparted so that Scheduled Caste and other backward classes may become self- reliant and independent. Government is spending a lot of amount on upliftment and development but benefits are not percolating down to them and it is creating a widening gap between different sectors of the society. The change in the attitude of upper caste and privileged towards these poor toiling masses of backward classes and Scheduled Caste is imperative to get desired result.

The researcher relies on Doctrinal research methodology relying on the relevant debates of Constituent Assembly, relevant constitutional provisions dealing with the principle of equality with reference to the Scheduled Caste and other backward classes, authentic commentaries on constitutional law, critical Articles attempted by scholars, relevant judicial pronouncements of different High Courts and the Supreme Court, numerous Commissions, recommendations meant for amelioration of the Scheduled Caste and other backward classes. For the purpose of this study, the leading commentaries attempted by noted legal and sociological luminaries on the Scheduled Castes and Backward Classes explained in historical perspective are utilized with the acknowledgment following the norms of research methodology. Relevant volumes of Constituent Assembly Debates and two National Commissions, recommendations, Dr. Ambedkar's writing and speeches, the different books devoted to Dr. Ambedkar's legal philosophy dealing with concept of equality and its objectives in Constitutional Philosophy are relied to trace the history. To examine reservation matter under Constitution of India for backward classes and the Scheduled Castes, the relevant judicial pronouncements are critically examined. To accomplish the task, the researcher had to utilize the following libraries:

Library of Indian Law Institute, New Delhi Supreme Court Library, New Delhi, Sapru Library of New Delhi, Library of Faculty of Law, B.H.U, Varanasi, The Library of Law seminar. The Faculty of Law, A.M.U Aligarh, The Library of Dr. Ambedkar's Chair of Legal study and Research, Deparment of Law, A.M.U Aligarh, Maulana Azad Library, AMU Aligarh, Library of the Department of the Sociology,A.M.U.Aligarh. Library of the Department of Advance study

and Research of the Department of History, A.M.U.Aligarh are duly utilized for the purpose of thesis.

Research methodology is treated to be effective tool to achieve the result of proposed research. In process of the present study and research, the Doctrinal research Methodology' is adopted relying on materials available in the library.

Dr. Ambedkar excelled himself during British regime as the champion of the cause of Backward Class especially the Scheduled Castes and Scheduled Tribes. He fought to ameliorate their position. British regime recognized his efforts and extended opportunity to him for advocating the cause of the Scheduled Castes and other backward classes. He appeared before numerous Commissions and Committees to advance his plea for improving the lots of them. He was invited to Round Table Conferences in London wherein he succeeded in getting the British regime convinced that for improving the overall conditions of the depressed classes by giving to them the facility of reservation, though this move was opposed even by Mahatma Gandhi and ultimately he preferred to go on fast unto death. By this move, the Mahatma Gandhi and the Indian Nation of British regime witnessed unprecedented unrest. Dr. Ambedkar was put under great pressure and ultimately Poona Pact came into being through this move. The reservation policy was retained, but in a diluted form. Freedom movement with the passage of time got intensity and ultimately Constitution making exercise began. The Constituent Assembly came into being for debating and drafting the provisions of the Constitution of India. Dr. Ambedkar had already got recognition by virtue of his qualities.

He was invited to the Constituent Assembly and was entrusted to draft the provisions of the Constitution of India in the capacity of the Chairman of the drafting committee. He expressed his satisfaction to be in the Constituent Assembly as he would be getting opportunity to provide safeguards to the backward classes specially the Scheduled Castes and Scheduled Tribes. The Constitution of India by which they could improve their position and brought up to the level to the rest people of India sharing the fruits of equality. Remaining in Constituent Assembly, he succeeded in getting the Constitution of India ensuring numerous safeguards and protection including the incorporation of reservation policy to them. Reservation policy was introduced to ameliorate the position of backward class, Scheduled Castes and Scheduled Tribes along with other oppressed sections of Indian society within the framework of the Constitution of India. Trough this research project, attempt has been made to analyze the need of reservation policy and its adoption in Constitution and along with implementation too. Exclusive role of Dr. Ambedkar has also been studied in getting reservation policy structured for the benefit of weaker sections especially Scheduled Castes and Scheduled Tribes.

This research venture reveals that to which extent Backward Class especially Scheduled Castes and Scheduled Tribes have been the beneficiary of reservation policy. Also this study unfolds that by virtue of reservation policy oppressed sections of our society especially the Scheduled Castes and Scheduled Tribes have come up to the level of other sections of the society.

This study reveals that by virtue of reservation policy, oppressed classes of our society have been able to come forward in the area of education, job and also in legislative houses. By this policy , researcher ventures to reveal that ugly impact of Hindu rigid caste system has been changed considerably and our nation is moving forward to advance the target of casteless society.

This study analyses the root cause of rigid caste system within the framework of Hindu religion on the basis of religious literature. Dr. Ambedkar's approach to Hindu Caste system has been discussed thoroughly. It was his considered view that the plight of oppressed segments of Indian society is based on the Hindu rigid Caste system. He denounced it as an evil. He revolted against it on the issue of untouchbility, Dr.Ambedkar's thesis has been scrutinized. Dr. Ambedkar's approach towards reservation policy is studied meticulously . Study reveals that he was not of the view that reservation facility should remain a continuing phenomena rather its relevance should be monitored from time to time.

The universe of this study is confined to the Constitutional safeguards accorded to in favour of backward classes especially Scheduled Castes and Scheduled Tribes in India. It makes an indepth study with regard to Hindu caste system and its denouncement by Dr. Ambedkar. Actual position of Scheduled Castes and Scheduled Tribes is determined in Hindu social order. Merit of Constituent Assembly Debates focused on the plightful situation of the Scheduled Castes and Scheduled Tribes. Reservation policy as tool for improving the lots of Backward Class, the researcher analyses the Constitutional position dealing with backward

class with reference to Scheduled Castes, Scheduled Tribes and protections to the Backward Classes with reference to the Scheduled Castes and Scheduled Tribes. .

The nature of this research is unique in post independent India as it attempts first time to analyze the role of Dr. Ambedkar who is considered to be the champion of oppressed segments of Indian society focusing on his contributions through Constituent Assembly Debates going thought the relevant Constitutional provisions devoted to safeguards of the backward classes specially Scheduled Castes and Scheduled Tribes reacting on Hindu rigid Caste system which was held to be responsible for the degradation of backward classes in India.

The outcome of study, in the humble estimation of researcher shall not only be an addition of fresh chapter in post independent India for analyzing the contributions of Dr. Ambedkar as a champion of social justice and for overall reform of the Scheduled castes and other backward classes within the framework of the Constitutional Scheme wherein he succeeded in incorporating numerous provisions for their overall welfare.

Different legislative provisions and judicial pronouncements of representative nature have been analyzed with the sole view to assess how these have been successful in ensuring and promoting the numerous safeguards for the betterment of the backward classes specially Scheduled Castes and Scheduled Tribes translating into action the lofty vision and pragmatic mission of Dr. Ambedkar. The Conclusion and suggestions of this study would be useful for the policy makers and for those who are associated with numerous programs and schemes

designed to ensure socio-legal welfare of the backward classes with reference to Scheduled Castes. .

This study provides source material on the basis of objective study to government being the custodian of the welfare state to improve further the existing safeguards making more realistic and responsive ensuring the betterment of backward classes specially Scheduled Castes and Scheduled Tribes in India upholding the philosophy of egalitarianism of Dr. Ambedkar to ensure the fruits of equality to every citizen irrespective of caste, religion, creed, colour and place of birth consideration

The evil of caste system has persisted for several thousand years in Hindu society. It is still prevalent in various forms throughout the country especially in the villages and more particularly in South India. The Scheduled Caste bridegrooms are not permitted to ride on mares in villages, Dalit can not even sit on their own charpoys, when person of others castes pass by. These persons are not being permitted to draw water from the common wells and in some cases even from hand-pumps. In many tea shops and Dhabas, separate crockery is used for serving these people. Barbers refuse to cut the hair of these people. Often there are also reports of gang rape, public auction of women, urinating in the mouth of women, compelling boys to eat night soil, parading naked women in the villages, mass killing and destroying the houses and properties of Scheduled Castes and Scheduled Tribes by the high caste persons. Such instances are numerous and reflect the deep stated prejudice of caste system still dwelling in the hearts of vested persons. This tendency has alienated Dalits and has the potential of

turning this hatred into militancy and fissiparous tendencies. No nation can progress if it is divided into countless groups and does not device equality to all persons. Its impact on suppressed human being prompted founding fathers of the Constitution of India to create an egalitarian society where justice: Social, economic and political equality of status and opportunity may be available to every one irrespective of caste, creed, religion and place of birth. Roots of reservation policy for the Scheduled Castes and backward classes in India lay deep in the past.

The hierarchical of social order was created over centuries with a view to preserve the monopoly of social status by the higher caste Hindus. As a result, property, education, freedom, justice, progress and prosperity were denied to the people of lower castes. Downtrodden in the Hindu society were stripped of the even equitable opportunities for political, social, economic and educational development. The caste system bestowed hierarchically graded privileges on some section of population and inflicted a series of disabilities to generation. Opportunities of growth and development were controlled and usurped by the higher castes with the result that the downtrodden were deprived and discriminated, symbolizing a powerful, institutionalized pattern of exploitation and suppression of the weak by the strong. In the Indian stratification of society, the scheduled caste constitutes an important stratum, not because they form about 15 percent of Indian's population, but because they occupy a unique position as 'untouchable'.

Thus the resurrection of the people who were known compendiously as the Scheduled Castes and treated higher to us 'caste less' 'outcastes' and 'untouchables' oppressed by and subject to every manner of deprivation

and discrimination for centuries after centuries, by a unique system of social and economic segregation 'graded inequality' graduation and degradation and gigantic cold blooded repression and prevented even from protesting their plight.

All this compelled our wise founding feathers to adopt policy of 'compensatory discrimination' as an equalizer to those who were too weak socially and educationally in the caste ridden Indian society. They took special notice of the downtrodden and obligated the state to promote with special case the educational and economic interest of the backward classes of the people, and in particular of the Scheduled Castes and to protect them from social injustice and exploitation. The Constitution also provided, that the state should strive to promote the welfare of the people and in particular to minimize the inequalities in income, status facilities and opportunities, amongst individuals and groups of people, residing indifferent areas or engaged in different vocations.

It is in this background, the architects of our National Charter very rightly considered the reservation in various spheres of the life of the Scheduled Castes as one of the potential means of reducing inequalities. Special concisions have been made to these castes in term of reservation of seats in legislative, educational institutions and government services and in terms of pecuniary benefits. The main objective of this special concession is that this background and suppressed segment of Indian population should be emancipated at the accelerated pace to catch them up with the overall pace of national development. It aims at accomplishing the object of historical restitution or reparation to effect

the systematic and cumulative deprivations suffered by the lower castes, is an exceptional and temporary measure designed to the used for the purpose of mitigating inequalities between communities. It is however the matter of great dissatisfaction that period of reservation has been repeatedly extended four times, but still is seen these classes of people are at the same position. This is because the social, economic and political inequalities have not yet been removed and they need reservation for the same time more with a view to enabling them to come on par with the rest of the nation. What is true today the lower layers of the people of the Scheduled Castes are where they were two hundred years ago bearing a few who have monopolized all the benefits designed for these poor brethren. The general opinion is that the benefits of reservation policy by and large have been snatched away by the top 'creamy layer' of the scheduled castes, thus keeping the weakest of the weak always weak and living the fortunate layers to consume the whole cake.

Often there are also reports of gang rape, public auction of women, urinating in the mouth of women, compelling boys to eat night soil, parading naked women in the villages, mass killing and destroying the houses and properties of the Scheduled Castes and Scheduled Tribes by the high caste persons. Such instances are numerous and reflect the deep stated prejudice of caste system still dwelling in the hearts of vested persons. This tendency has alienated Dalits and has the potential of turning this hatred into militancy and fissiparous tendencies. No nation can progress if it is divided into countless groups and does not device equality to all persons special provisions are made in the Constitution of India for the overall amelioration of the suppressed and backward

classes of the society especially the scheduled castes and the scheduled tribes.

It is noteworthy that the Scheduled Castes and Scheduled Tribes who were treated as untouchables have, in particular been made the victim of social, economic and religious inequalities. Since the concept of 'social justice' has been adopted by the Constitution of India to be one of the guiding factors to translate the concepts of 'justice, equality, liberty and fraternity. The Constitution of India being the supreme law of the land ensures equality and equal protection of laws to all. It also ensures equal opportunity. No doubt, India has got political freedom and has political democracy but it must be the concern of every one that real freedom can not be cherished without attainment of the social and economic democracy. It is unfortunate that the Indian society is sharply divided into various castes and sub-castes and free intercourse is obstacles due to rigidity and segregation and division of the society based on rigid caste considerations.

Mahatma Gandhi, the Father of Nation happened to be on forefront but it was his conviction that by maintenance of Hindu caste system on status quo basis, the problem of 'untouchables' could be conquered successfully but Dr. B.R. Ambedkar who emerged a revolutionary had different approach. Dr. Ambedkar was very radical on the issue of Hindu religion and he appealed to his followers' not to depend upon God or superman for the abolition of untouchability. 'For the salvation of untouchability', he advocated for political power. He ridiculated that the pilgrimages and observance of fasts would not be able to save the 'untouchables' from starvation. He tried to impress upon that 'bread was

better than the worship of God' through different fora, he voiced his conviction for the advancement of the 'untouachbles' and conflict of approaches between him and Mahatma Gandhi emerged sharply.

The Constitution, on the other hand, aims for the establishment of a more equal and just Social order .The Constitution has established the supremacy of law. The social order is what the organic law preserves. It prohibits continuation of certain institutions and practices, which are contrary to establishment of just and equitable social order. All agencies of state, including Courts, are to translate the basic plan of the Constitution in concrete measures. Prohibition of discrimination on the ground of Caste imposed by Article 14, 15, and 16, of the Constitution and its enforcement last for the 63 years has hardy led to the establishment of a Casteless Society or to any significant step in that direction. In spite of abolition of untouchability by Article 17, the dragon is still at large, infact, atrocities on the Harijans are on increase.

It is in this background the architects of our National Charter very rightly considered the reservation in various spheres of the life of the scheduled castes as one of the potential means of reducing inequalities. Special concessions have been made to these castes in term of reservation of seats in legislative houses, educational institutions and government services and in terms of pecuniary benefits. The main objective of this special concession is that this backward and suppressed segment of Indian population should be emancipated at the accelerated pace to catch them up with the overall pace of national development. It aims at accomplishing the object of historical restitution or reparation to effect the systematic and cumulative deprivations suffered by the lower

castes, is an exceptional and temporary measure designed to be used for the purpose of mitigating inequalities between communities. It is, however, the matter of great dissatisfaction that period of reservation has been repeatedly extended four times. But still is seen these classes of people are at the almost same position. This is because the social, economic and political inequalities have not yet been removed and they need reservation for same time more with a view to enabling them to come on par with the rest of the nation.

The Constitution of India has provision for the overall amelioration of the suppressed and backward classes of the society especially the scheduled castes and the scheduled tribes. History bears testimony that the institution of caste system sanctioned privileges to a section of society who understood themselves as a superior class and at the same time it inflected a series of disabilities on other sections which continued from generation to generation. The Constitutional mechanism was designed besides so many lofty objectives, one was to regulate the Hindu Social order which is based on superiority and inferiority value system created by its rigid Hindu caste system.

History is evidence to establish that so many personalities worked to wipe out the evil influence of the caste system and to give rightful place to the suppressed section of the society who were sufferer due to rigidity of the caste system. Mahatma Gandhi, the Father of Nation happened to be on forefront but it was his conviction that by maintenance of Hindu caste system on *status quo* basis, the problem of 'untouchables' could be conquered successfully but Dr. B.R. Ambedkar who emerged a revolutionary leader approached the problem of Hindu caste system and

the fate of suppressed human being from different angle. In estimation of Dr. Ambedkar, caste is a barrier to social progress and individual advancement of the personality. He viewed social inequality and economic disparity the direct result of Hindu caste system.

Dr. Ambedkar was very radical on the issue of Hindu religion and he appealed to his followers not to depend upon God or superman for the abolition of untouchability. For the salvation of' untouchability, he advocated for political power. He ridiculated that the pilgrimages and observance of fasts would not be able to save the 'untouchbles' from starvation. He tried to impress upon that 'bread was better than the worship of God' through different for a, he voiced his conviction for the advancement of the 'untouachbles' and conflict of approaches between him and Mahatma Gandhi emerged sharply.

Dr. Ambedkar got opportunity to associate himself in Constitution making process. In this capacity, he exhausted his positive efforts at his command for the betterment of the 'untouchables' through Constituent Assembly wherein he enjoyed the position of the chairmanship of the Drafting Committee of the Constitution of India. The preamble to the Constitution of India outlines the objectives to be achieved. It conveys the intention of the makers to reconstruct the social order based on just and egalitarian values. Now 'untouchability stands abolished constitutionally and untouchables are sanctioned equal rights, 'untouchables' happened to be socially and educationally backward class, hence, there is a provision for adopting beneficial provision for the betterment of suppressed humanity. Trough affirmative action which is covered under the doctrine of 'protective discrimination', the

government of India is having constitutionally backward classes, besides the 'freedom of expression' and 'personal liberty', there is guarantee for religious, cultural and educational rights.

For socio-economic justice, there are provisions under 'Directive Principles of State Policy. There is special mention for state to protect society from social injustice and all forms of exploitation and also to take special care to promote educational and economic interest of weaker sections in general and of the Scheduled Castes and other backward classes. Article 340 of the Constitution of India empowers the president of India to appoint a Commission to investigate the condition of socially and educationally backward classes and the difficulties under which they labour and to recommend steps to be improve their conditions. In addition to the variety of Constitutional provisions to prevent the commission of the offences and atrocities against the Scheduled Castes and other backward classes, the Parliament has enacted two important legislations: The Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. These two legislative ventures of the government of India are to accord special protection for the overall betterment of the Scheduled Castes and other backward classes. The present research is an attempt to see to what extent the beneficiaries of reservation policy have been really benefited .An attempt is also made to find out the extent of progress which these people have been able to make by virtue of Constitutional safeguards in due course of time.

Chapter I

SCHEDULED CASTE AND BACKWARD CLASSES EXPLAINED IN HISTORICAL PERSPECTIVE

SCHEDULED CASTE AND BACKWARD CLASSES EXPLAINED IN HISTORICAL PERSPECTIVE

This is of Spanish and Portuguese origin. Casta means lineage or race. It is derived from the Latin word castus, which means pure. The Spaniards were the first to use it, but its Indian application is from the Portuguese, who had so applied it in the middle of the fifteenth century. The current spelling of the word is after the French word "Caste", which appears in 1740 in the "academics," and is hard by found before 1800. Before that time it was spelt as 'cast'. In the sense of race or breed of man, it was used as early as 1555 A.D.[1]. The Spanish word 'casta' was applied to the mixed breed between Europeans, Indians and Negroes.[2] But "Caste" was not used in Indian sense till the Seventeenth century[3]. As the Indian idea of caste was but vaguely understood. This word was loosely applied to the hereditary classes.[4] Of Europe resembling the castes of India, who keeps themselves socially distinct. Darwin[5] has applied this word to different classes of social insects. The Portuguese used this word to denote the Indian institution, as they thought such a system was intended to keep purity of blood. We thus see that derivation of the word does not help as to understand what caste is. The word 'Caste" is used in every day life and we use it to distinguish one person from another. We say that such and such a person belong to a particular caste. In saying it we generally mean to convey that he is born of parents or is a member of the family said to belong to a particular caste. In this way, caste is a hereditary group. And in biology the word is used only for descent or heredity.

According to *Luncberg* "A Caste is nearly a rigid social class into which member is born and from which they can withdraw or escape only with extreme difficulty.[6]

According to *Green*, "Caste is a system of stratification in which mobility, up and down the status ladder, at least ideally may not occur."[7]. According to Anderson and Panker "Caste is extreme form of social class organization in which the position of individual in the status hierarchy determined by descent and birth".[8]

According to *Maciever*, "when status is wholly determined, so that men are born to their lot without any hope of changing it, then class takes the extreme form of caste."[9]

According to *Ketkar*, "Caste is a social group having two characteristics [10] memberships is confined to those who are born of members and includes all persons so born.The members are forbidden by an inexorable social law to marry outside the group.

Each one of such groups has a special name by which it is called. Several of such small aggregates are grouped together under a common name, which these larger groups are but sub- divisions of group still large which have independent names. Thus we see that these are several stages of groups and that the word "Caste" is applied to group at any stage. The words, "Caste" and "sub-Caste" are not absolute but comparative in signification. The larger group will be called a sub-caste. A group is a caste or sub-caste in comparison with smaller or larger. When talk of Maratha Brahman, and Konkan Brahman, the first one would call a Caste while the latter would be called caste. Maratha

Brahmans in their turn would be called a sub- caste of the Southern or Dravidian Brahmans.

Those divisions and sub-divisions are introduced on different principles. In this way two hundred million Hindus are so much divided and sub-divided that there are castes, who can marry hand, there are some castes in which the process of division and sub-division has not been carried to its logical extent which can boast of five million. These three thousand castes with their sub-castes put together make Hindus society. But definitions are inadequate for the academic purposes since sociological aspect require a more comprehensive and clarified definition.

Modern thinkers consider it best to enumerate features of caste in defining it. This is what Hutton, Ghurye and N.K. Dutta have done, of the predominating characteristics of caste, N.K. Dutta has mentioned the following; [11]

1. Members of caste can not wed outside their own caste.
2. There are similar but less strict laws governing the partaking of food with members of other groups.
3. For many castes the occupations are fixed.
4. There are some accepted stratifications among the castes in which the Brahmans have been accorded the best places at the top.
5. Birth determines the caste of the individual for his entire life, so long as he is not extradited from it for violating its laws. There is no other possible way of shifting from one caste to another. All occupations are based on the respect of the Brahmans. This

description of the Hindu caste system by Dutta is a more comprehensive exposition but this too does not take into account the numerous variations presently taking place in the caste system. Actually, it is difficult to formulate a definite and permanent definition of caste. The most that can be alone is to describe the features of the caste system in a particular context, since the caste system is undergoing much modification and transformation. It would not be surprising if caste were eventually reduced to a word signifying merely are increasing and the restrictions on mutual behaviour exchange of good will and conduct are breaking. Some people change their castes on the strength of their wealth. The occupations for the various castes are no longer fixed. A member of any caste takes to any profession what he desires. The Brahmans have been deprived of much of their past glory and respect. Panchayats are to be seen and even they have no control whatsoever the members. Many people have been even started excluding their caste name from the name they use. In this way caste is continually taking on the shape of class and casteism is growing in the form of classism.

Over the time, the society has come to be characterized by the caste system. It has influenced all fields of activity, disjointed society into the numerous divisions killing the very sense of social interdependence. Every caste has come to be an island by itself. Here we analyze some of its main characteristic features. The caste system rendered our society pluralist. A caste is a group with a well developed life of its own, the membership, unlike the voluntary associations and classes is not determined choice but by birth. Most of the castes, excepting the high

one's like Brahman and the Kshatriya (Rajput). They have Panchayat of their own, having extensive power and authority. They decide not only simple caste matters but even such other offences that should legitimately fall in judicial process. These include matters like: (a) eating, drinking or having similar dealings with a caste or sub- caste, with which social intercourse is held to be forbidden, (b) Keeping as concubine a woman of another caste. (c) Seduction of or adultery with a married woman, (d) refused to fulfill a promise of marriage, (e) non-payments of debts, (f) petty assaults, and (g) breaches of customs of the trade peculiar to the caste etc. Caste was thus a group *as Ghurye* point's out[12] with a separate arrangement for meeting out justice to its members apart from that of the community as a whole, within which the caste was included as only one of the groups. Hence, the members of a caste ceased to be members of the community as a whole, as for as that part of their morals which is regulated by law was concerned." In caste bound society, the degree of community feeling is comparatively restricted. In day to day affairs, such as marriage feasts or death, the members depend upon the caste follows. The members own moral allegiance to their caste first, rather than to the community as a whole. The caste system thus divides society into segments which according to *Panikar*, [13] "renders the development of any common social feeling impossible. In fact it is the negation of the idea of society." Besides this differentiation in the social practices allowed the continuance of the cultural gaps between the castes, and allowed existence of different standards of morals and customs among them. The caste system has thus destroyed the homogeneity of the society.

(a) One of the characteristics of the caste society is the hierarchy of groups. There is a definite scheme of social precedence amongst the caste with the Brahman at the head of the hierarchy. Only in Southern India artisan castes disputes the supremacy of the Brahman. Ghurye points out that "there are as many as two hundred castes which can be grouped in classes whose gradation is largely acknowledged by all. But order of social precedence amongst the individual castes of any class, can not be made definite.

(b) There are minute rules not without differences as the food or drink that one should accept by at the hands of a person other than his own castes. All foods for this purpose are classified in two classes: "*Kachaha* and *Pakka*". The former being any food cooked in water and the latter includes those which are cooked in Ghee without the addition of water. The U.P. census 1911 points[14] out that as a rule a man will never eat '*kachah*' food unless it is prepared by a fellow caste-man, which in actual practice means a "member of his endogamous group whether it be caste, or sub-caste, or else by his Brahman Guru' or spiritual guide. But in practice most castes seem to take no objection to *kachahh* food, at the hands of some of the caste only". On the whole, however, as F.A. Blunt has made out, that there is,[15] no relation between a caste's social position and the severity of its cooking taboo". According to Ghurye, as many as thirty six out of seventy six caste of U.P. take *kachcha* cooked food from only their own members and none others. Similar restrictions are observed on smoking. Generally speaking however, smoking comes into the

same category as taking water or *kachcha* food, and the usual expression for suspending a man's privilege is '*huqqa pani band karna*', such an injunction according to Huttan,[16] prevents a man associating with this caste fellows".

(c) "The ideas about the power of certain castes to convey pollution by touch are not so highly developed in Northern India as in the South. The idea that impurity can be transmitted by the mere shadow of any untouchable or by his approaching with in a certain distance does not seem to prevail in Hinduism". The belief that pollution can be communicated by some castes to members of the higher ones is prevalent in Gujarat. Theoretically, the touch of a member of any caste lower than one's own, defiles a person of the rule is not strictly observed. In the Maratha country, however, the show of an untouchable is sufficient to pollute if it falls on a member of a higher caste. In Tamil Nadu, and especially in Malabar, this practice is still more followed as certain cases are to keep a stated distance between themselves, the Brahman and the other higher castes. The pollution distance varies from caste to caste and from place to place. According to the classification given by Ghurye, the shanar, today –tapper of Tamil Nadu contaminates a Brahman if he approaches the latter within the twenty-four paces. Among the people of Kerala, a Nayer may approach a Numbudari Brahman, and a Pulayan may not approach him, while a Tiyan must keep himself at the distance thirty-six steps from the Brahman, and a Pullayan may not approach him within ninety six paces. So much rigidity is attached to the pollution custom that a Brahman will not perform

even his ablutions within the precincts of a Shudra's habitation. The washerman and the barber who serve the general body of villagers also do not render their services to the untouchable caste.

(d) Social segregation is an aspect of caste differentiation. According to Ghurye "segregation of individual castes or of groups of castes in village is the most obvious mark of civil privileges and disabilities, and it has prevailed in a more or less definite from all over India. Segregation is more severe in the South than in the North. In some parts of the country such as Marathi, Telgu, and Kanarese speaking regions, it is only the impure castes that are segregated and made to live on the outskirts of villages. In the Tamil and Malyalam regions, very frequently different cases occupy distinctly different quarters or sometimes the village is divided into three parts, occupied by the dominant caste or by Brahman's allotted to the Shudra and third reserved for the Panchamas or untouchables. In the South as indicated by Ghurye, parts of the town or village are inaccessible to certain castes.

(e) The agitation by the impure castes to gain free access to certain streets in Vaikam in Travancore brought into clear relief some of the disabilities of these castes. In Tamilnadu the position is just the reverse. There, Brahman's right to access to any part of the village was restricted. The Prayers would not permit a Brahman to pass through their streets, so much so if one happened to enter their quarter they would greet him with cow- dung water.

(f) "All over India Ghurye point out the impure castes are debarred from drinking water from the village well, which is used by the

members of the other castes. A Mahar, one of the untouchables, in Maratha country was forbidden from spitting on the road least a pure caste may get polluted. If his foot happens to touch it. Depressed castes, in Gujarat used to wear horn as their distinguishing mark. Periods of pollution in connection with birth of a child and death of a person are observed all over the country. Some period after child birth is considered polluting in Southern India is ten days it is eleven or twelve for a Kshatriya, fifteen for Nayal, twenty four for a Karicchan and twenty-eight for a Charuman. It is forty two in the north of Malabar and four months for a kadar". The pollution period after death is also at variance from caste to caste. The Brahman must observe mourning for ten days, the Kshatriya for twelve, the Vaishya for fifteen and the Shudra for a full month. There is now a significant change in the observance of the pollution periods by castes after birth and after death. Restriction also prevailed regarding the height of, and the material to be used in the construction of houses by the lower castes. The shanars and Izharas, toddy-tapers of the eastern and Western coasts were not allowed to build houses above one storey in height. In some parts of the country, much importance is attached to right of a given caste, to clothe themselves with certain garments, wear certain ornaments, and use certain articles of show or luxury in public. In the South the wearing the cloths above the waist was formerly a privilege of the twice-born. Similar prohibition restricted the use of umbrellas, and of shoes. According to Ghurye "the toddy-tappers of Malabar and the east coast, Izharas and Shanars, were not allowed to umbrellas, to

wear shoes or golden ornaments, to milk cows or even to use the ordinary language of the country." Further he indicates; In Tamilnadu there has been for ages a faction among the non-Brahman caste, dividing most of them into two groups, the right hand castes and claim certain privileges which they strongly refuse to those of the ' left hand' viz riding on horse-back in processions, carrying standards with certain devices and supporting marriage both nor employ on their standard devices peculiar to the right hand' castes"

Besides there were restrictions on the Shudra regarding performance of rituals. They were prohibited from reciting the Vedic mantras, and performing the Vedic rituals. They had to content them selves with Puranic rituals only. Similarly the innermost recesses of temples could be approached only by Brahmans. A Brahman was not expected to bow to anyone, but others were required to bow to him. Generally a caste or a group of allied castes considered some of the calling as its hereditary occupation, to abandon which in pursuit of another's though it might be more lucrative, was thought no to be right. Thus a Brahman thought it to be correct for him to be priest, while the Chamar regarded it as his duty to cure hides and prepare shoe. This was generally true. No caste would allow is members to take toddy- tapping and brewing, or impure, like scavenging hides. It was not only the moral restraint and the social check of one's caste fellows that acted as restraint on the choosing one's occupation, but also the restriction put by other castes, which did not allow members other than those of their own castes to follow their callings. There were, however, occupations like trading, agriculture, working in the field and joining the military service which were

considered as being open for all. Most of the castes are divided into sub-caste, and the caste practices forbid the members to marry spouses out of their sub- caste. Each of the sub-caste is strictly endogamous. The principle of endogamy is so dominant sociologist is led to regard it as "the essence of the caste system" There are, however, a few exceptions to this general rule of marrying within one's own group due to practice of hypergamy. In some parts of the Punjab especially in the hills, according to Ghurye a man of a higher caste can take as wife a girl from one's of the lower castes.

The segmental divisions of society, the hierarchy of castes and restrictions on feeding and intercourse are status based and influence of castes, as the status in the hierarchy of any sub-caste depends upon the status of the caste" The social segregation, restricted choice of occupation and restriction on marriage on role determining and are dependent on the first three characteristics. Casteism is partial or one-sided loyalty in favour of a particular caste. When a mode of thinking assumes the form of an ism, it becomes rigid and partial. The sense of caste, when it implies a specific status in society does not mean casteism only when the tendency to consider the interest of one's own caste as opposed to the other castes is attached to it. Due to it the members of one caste do not hesitate in dealing fatal blows to the interests of the other castes, if the interests of their own caste are furthered in so doing. In brief casteism is a blind group loyalty towards one's own caste or sub-caste which does not care for the interests of other castes and seeks to realize the social, economic, political and other interests of its own group. Since hundreds of years caste system is prevalent in India. And even now, it is firmly rooted in Indian social structure. The following

conditions have favored the continued existence of caste system in India.[17]

Geographical isolation has a large part to play in rendering a society static and powerless. The absence of adequate means of transport leads to the geographical isolation from others of people who inhabit distantly situated areas and this fosters old customs, mores, traditions and superstitions, all of which encourage the caste system.

Hindu society has never been very dynamic. There has never been any stupendous variation in its political circumstances and traditions. Its social mores, customs and tradition have failed to change over the ages as times have marked along. But this does not mean that Hindu society has not changed at all. To say that it is not dynamic is only to indicate the extremely slow rate at which variations and modification are instituted in it. In this way the comparatively static nature of society is a condition favorable to the continued existence of the caste system.

A further contribution to the caste system and utility of the caste system was made by foreign aggression. Many scholars hold that the caste system started in India when the Aryans invaded the country. The Aryan victors were fair skinned and the native of India were black victims. Thus, two castes were formed in India. The victorious race considered itself superior to the victimized one and considered it below its dignity to associate itself and to marry into later. In this way, strict laws regarding conduct, diet, marriage, etc, were formulated. There were the fundamental constituents of the Hindu caste system. The rural social structure is usually unchanging and static. Ancient traditions are better respected in it. As the rural structure weakens and urbanization increases

the caste also becomes progressively weaker. The influence of religion is the most important factor contributing to the continuation of the caste system. The Hindu caste system is looked upon as a divine institution. People who violate it are considered sinners and it is believed that God will punish them. Due to this reason people do not have the courage to violate the laws of the caste system.

The existence of many races in the country led to the formulation of many strict laws concerning discrimination since each race endeavored to maintain its purity. In the medieval period of Indian History, strict laws concerning caste were laid down to protect Hindu society. Lack of education occupies un important position among the factors which have encouraged the existence of caste system in Hindu society. Superstitions traditions and mores breed freely among uneducated people. Thus lack of education favors caste system. And yet the bond of caste has gradually wreaked. The following elements have tented to weaken the caste system in the present centuary.[18] A major part in weakening the caste system is played by the modern education. It emphasizes democratic values such as liberty, equality and fraternity. It bears the stamp of the scientific and free thinking in the west. It has laid great stress upon human dignity. Thus the expansion of education, communication and association is proportionately weakening the ties of the caste. It has encouraged interacts marriages, the feelings of the superiority and Untouchability are being gradually eliminated from the minds of school going children of all castes.

Industrialization had led to a decrease in the intensity of caste favour because persons from all caste have sought and obtained employment in

factories. According to A.W. Green, "although the Brahman has to take a prolonged religious bath in order to purify himself amongst the defilement caused by the mere shadow of a Shudra in the crowded lanes of city and the busy offices." As a result of industrialization, individuals of all caste came into mutual contact in the factories, hotels, markets, trains, trams and buses, etc and the observance of laws concerning touchability became impossible. In the modern age wealth is replacing caste as the basis of social prestige. A person adopts the occupation which appears to him to be the most profitable. The consideration in the choice of a profession is no longer caste but individual capability and the facility in the earning wealth. A wealthy Shudra more respected than a poor Brahman, for their reason the ties of the caste are being loosened in the frantic race after wealth. As a result of the influence of modern education there has been a flood of movements for social emancipation.

Means of transport and communication developed in India. This put an end to geographical isolation and the thoughts, customs, etc of various places influenced each other. It became difficult to maintain the rigidity of caste in the whirl wind of communication set into motion by industrialization through such means as buses, trains, trams, cars, etc. In this connection Risely has written that the person of India has come on one platform where the train halts momentarily. One does not inquire the caste of the seller while purchasing something from him. To end the discriminatory practices on the basis of the caste system was a part of the aims of the national agitation for a political awakening of the people in India. For reason it made efforts to weaken the caste consciousness in the people.

In the legal machinery of the British Government, all castes were similarly punished for the same offences. The establishment of judicial courts deprived the caste panchayats of their power and they no longer retained the authority to punish a criminal. In this way the restrictions upon the opponents of the caste system were removed and gradually its laws also lost their meaning and significance. New classes are appearing in Hindu society based o economic status. There social classes are replacing the caste. The organization of castes was vertical and that of economic classes is horizontal. As the class consciousness is increasing, caste consciousness is decreasing. The most severe shock to the caste system was the country's gaining freedom from British rule. Para 15 (2) of the Constitution of independent India declared all citizens equal. Thus the fortress of the caste system collapsed. According to the Untouchability Crime Act, 1955 it is a crime to prevent anyone from using a public place. The respect one accorded to the caste system dwindled through the influence of the rapid growth of the means of transport, educational facilities, industrialization, the democratic method of government etc.

In spite of the presence of so many unfavorable circumstances, the caste system continue to exist in an aggravated condition in the country and at some places it has become stronger through being identified with political interests. The Constitution of India makes many references to Caste". Here below are some of the major references:

Article 15 (1) of the Constitution ordains that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (2) of Article 15 says that no

citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and place of public entertainment or the use of wells, tanks, bathing ghats, roads and place of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public. Nothing in this Article or clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. According to Article 16 (1) There shall be quality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in respect of, any employment or office under the state. Nothing in this Article shall prevent the state from making any provision for reservation of appointments or posts in favour of any backward class of citizens which, in opinion of the state, is not adequately represented in the services in the state. Nothing in this Article shall affect the operation of law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

According to Article 17 Untouchability is abolished and its practice in any form is forbidden the enforcement of any disability arising out of Untouchability shall be an offence in accordance with law. Article 25(1) state that Subject to public order, morality and health and the other

provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to process, practice and propagate religion. Nothing in this Article shall affect the operation of any existing law or prevent the state from making any law regulating or restricting any economic financial, political or other secular activity which may be associated with religious practice and providing for social welfare and reform of the throwing open of Hindu religious institution of a public character to all classes and sections of the Hindus. According to Article 29(1) any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

No citizen shall be denied admission to any educational institution maintained by the state or receiving aid out of state funds on grounds only of them. Article 46 states that the state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Article 335 according to the claims of the members of the Scheduled Castes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the union or of state. Article 340(1) says that the President may by order appointment a commission consisting of such persons as he thinks fit to in investigate the conditions of socially and educationally backward classes with in the territory of India and the difficulties under which they labour and make recommendations as to the steps that should be taken by the union or any state and the conditions and as to the grants that

should be made and the order appointing such commission shall define the procedure to be followed by the Commission. A Commission so appointed shall investigate to the matters referred to them and present to the president a report setting out the facts as found by them and making such recommendations as they think proper.

The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of the Parliament. According to Article 341(1) the President may with respect to any state or union territory, and where it is a state consultation with the Governor. Thereof, by public notification, specify the castes, races or Tribes or part of or groups within castes, races or Tribes which shall for the purposes of this Constitution be deemed to be scheduled castes in relation to that state or Union territory as the case may be.

Parliament may by law include in or exclude from the list of the Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe, or part of a group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

The first clause of Article 15 directs the state not to discriminate against a citizen on grounds only of religion, race, caste, sex or places of public entertainment, of public resort, wells, tanks, roads, etc. The first clause of Article 15 mentions the prohibited grounds in any matter which is exclusively with in the control of the state. The second clause prohibits both the state and the above mentioned places. The third clause empowers the state to make special provisions for the protection of

women and children. The fourth clause which was added by the Constitution (1st amendment) Act, 1951, enables the state to make special provisions for the protection of the interests of the backward classes of citizens and is, therefore, an exception to Article 15 and 29 (2) of the Constitution. By clause (1) of Article 15 the state is prohibited to discriminate between citizens on grounds only of religion, race, caste, sex, place of birth or any of them. The word discrimination means to make an adverse distinction or to distinguish unfavorable from others. If a law makes discrimination on any of the above grounds it can be declared invalid. Thus in *state of Rajasthan vs. Pratap Singh*,[19] the Supreme Court invalidated a notification under the Police Act of 1851 which declared certain areas as disturbed and made the inhabitants of those areas to bear the cost of additional police stationed there but exempted all Harijans and Muslims. The exemption was given on the basis only of 'caste' or 'religion' and hence was contrary to Article 15(1). Article 15(2) is a specific application of the general prohibition contained in Article 15(1). Article 15(2) declares that no citizen shall be subjected to any disability. Restrictions are condition on grounds only of religion, race, caste, place of birth or any of them with regard to (1) access to shops, public restaurants, hotels and places of public entertainment, or (b) the use of wells, tanks, baths, roads and places of public resort maintained wholly or partly out of state funds are dedicated to the use of the general public. A place of public resort means places which are frequented by the like a public bus, ferry, public urinal or railway or a hospital etc.

It is to be noted that while clause (1) of Article 15 prohibits discrimination by the state, clause (2) prohibits both the state and the

private individuals from making any discrimination. The object of Article 15(2) is to eradicate the abuse of the Hindu social system and to heraled a united nation. The Madras Removal of Civil Disabilities Act, provides punishment for social disabilities. No law, custom or usage could authorize any person to prevent any Harijans. Depressed classes or the like from having access to the public places are mentioned in the Act.

Article 15(4) is an exception to clauses (1) and (2) of Article 15. It was added by the Constitution (1st Amendment), Act, 1951, as a result of decision in *State of Madras vs. Champakam Deorajan*[20]. In this case the Madras government had reserved seats in state medical and engineering colleges for different communities in certain proposition on the basis of religion, race and caste. The state defended the law on the ground that purported to promote the social justice for all sections of the people as required by Article 46 of the Directive Principles of state policy. The Supreme Court held the law void because it classified students on the basis of caste and religion irrespective of merit. The directive principles of state policy can not override the fundamental rights. In another case an order requisitioning land for the construction of a Harijan colony was held to be void under Article 15(4) [21]. To modify the effect of these two decisions, Article 15 was amended by the Constitution (1st Amendment) Act, 1951.

Under this clause the state is empowered to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes. After the advancement, it would be possible for the state to put- up a Harijan colony in order to advance the

interest of backward classes. A major difficulty raised by Article 15(4) is regarding the determination of who are socially and educationally backward classes. This is not a simple matter as sociological and economic considerations come into play in evolving proper criteria for its determination. Article 15(4) lays down no criteria to designate backward classes, it leaves the matter to the state to specify backward classes, but the courts can go into the question whether the criterion used by the state for the purpose are relevant or not.[22] The question of defining backward classes has been considered by the Supreme Court in a member of cases. On the whole, the Court's approach has been that state resources are limited. Protection to one group affects the constitutional rights of other citizens to demand equal opportunity, and efficiency and public interest have to be maintained in public services because it is implicit in the very idea of reservation that a less meritorious person is being prepared to a more meritorious person. The court also seeks to guard against the perpetuation of the caste system in India and the inclusion of advance classes within the term backward classes. From the several judicial pronouncements concerning the definition of backward classes, several propositions emerged. First, the backwardness envisaged by Article 15(4) is social and educational and not either social or educational. This means that a class, to be identified as a backward should be both socially and educationally backward. Secondly, poverty alone can not be the test of backwardness of India because by large people were poor and, therefore, large sections of population would fall under the backward category and thus the whole object of reservation would be frustrated. Thirdly, backwardness should be comparable (though not exactly similar) to Scheduled Castes.

Fourthly, caste may be the sole or even the dominant criteria. If classification for social backwardness were to be based solely on caste, then the caste-system would be perpetuated in the Indian society. Fifthly, poverty place of habitation, all contribute to backwardness and such factors can not be ignored, sixthly, backwardness may be defined without any reference to caste. As the Supreme Court has emphasized, Article 15(4) "does not speak of caste, but only speaks of class and that "caste" and "class" are not synonymous. In *M. R. Balaji v. state of Mysore*,[23] the Mysore government issued an order under Article 15(4) reserving seats in the medical engineering college in the state as follows:

Backward and more backward classes 50 percent, Scheduled Caste and Tribes are 18%. Thus 68% of the seats available in the colleges were reserved and only 32% was made available to the merit pool. Backward and more backward classes were designated on the basis of castes and communities. The Supreme Court declared the order bad. The defect in the Mysore order was that it was based solely on caste without regard to other relevant factors and this was not permissible under Article 15(4). The court said that the state was not justified in including in the list of backward classes all those castes or communities whose average of student population per thousand was slightly above or very near or just below the state average. Only those which were well below the average of student population per thousand was slightly above are very near or just below the average can be regarded as backward. Thus the main defect of the system adopted by the state is that less than 90% of the population of the state is backward. It was held that this was inconsistent with Article 15(4). Speaking generally, the court said the special provision should be less than 50% how much less than 50% would

depend upon the relevant prevailing circumstances in each case. An order saying that a family whose income was less than Rs.1, 200 per year, and which followed such occupations as agriculture, petty business, inferior services, craft, etc. would treat as backward was declared to be valid. Here two factors, economic condition and profession, were taken into account to define backwardness, but caste was ignored for the purpose. In Balaji, the Supreme Court had mentioned caste as one of the relevant factor for determining social backwardness. The order in the instant case had been challenged on the ground that caste had been completely ignored for the purpose. The Supreme Court ruled that though caste is a relevant factor in certaining backwardness of a class, there is nothing to preclude the authority concerned from determining special backwardness of a group of citizens if it can do so without relevance to caste.[24]

Balaji and *Chitralekha Cases* represent the most conservative judicial view on the relevance of caste for determining social backwardness. But in course of the judicial view it has taken note of the fact that there are numerous castes in the country which are backward socially and educationally and the state has to protect their interests. A case is also a 'class' of citizen and, therefore, if an inter caste is found to be socially and educationally backward, as a fact, on the basis of relevant data and material, then inclusion of the caste as such would not violate Article 15(1), when backwardness is defined with reference to castes, the Courts wants to be satisfied that not 'caste' alone, but other factors have also been considered for the purpose. On this basis, the Court upheld a Madras order defining backward classes mainly with reference to castes. Looking at the history as to how the list had come to be formulated, the

Court felt satisfied that caste was not taken as the sole basis of backwardness. The main criterion for inclusion in the list was social and educational backwardness of the castes based on their occupations. Castes were only a compendious indication of the classes of people found to be socially and educationally backward.[25]

Clauses (1) and (2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the state. No citizen can be discriminated against or be ineligible for any employment or office under the state on grounds only of religion, race, caste, sex, descent, place of birth or residence. Clauses 3,4, and 5 of Article 16 are the three exceptions to this general rule of equality of opportunity. It is to be noted that under Article 16 the guarantee against discrimination is limited to employment and appointment under the state. Article 15, however, is more general and deals with all cases of discrimination which do not fall under Article 16. Article 16 embodies the particular application of general rule of equality laid down in Article 14 with special reference for appointment and employment under the state[26]

Article 16 guarantees equality of opportunity in matters of appointment in state services. It does not, however, prevent the state from prescribing the necessary qualifications and selective tests for recruitment for Government services. The qualifications prescribed may, beside mental excellence include physical fitness, sense of discipline, moral integrity, loyalty to the state. Where the appointment requires technical knowledge, technical qualification may be prescribed. The character and antecedents of candidates may be taken into consideration for

appointments in government services.[26] The selective test, must not be arbitrary. It must be based on reasonable ground and have nexus between qualifications and the object that is, post or nature of the service. Article 16(4) empowers the state to make special provision for the reservation of appointments of posts in favour of any backward class of citizens which in the opinion of the state are not adequately represented in the services under the state. Thus Article 16 (4) applies only if two conditions are satisfied.

The class of citizen is backward i.e. socially and educationally, and the said class is not adequately represented in the service of the state. The second test can not be the sole criteria; "The expression backward classes" in Article 16(4) has been used in the same sense as in Article 15(4). The Supreme Court has considered the meaning and scope of the expression in a number of decisions. From these pronouncements, the following propositions emerge:

(1) Article 15(4) and 16(4) speak of clauses only and do not speak of caste.

(2) Caste by itself can not be determining factor of backwardness, though it may be one amongst several factors of backward classes and backward caste and classes are different expressions.

(3) The backward classes must be social and educational and not either social or educational.

(4) Social backwardness is in ultimate analysis the result of poverty. But poverty by itself is not the determining factor of social

backwardness. Poverty is relevant in the context of social backwardness.

(5) Reservation should not be excessive.

(6) The backward classes in the matters of backwardness comparable to Scheduled Castes and Scheduled Tribes.

(7) Reservation can not be made at the cost of efficiency in administration as per Article 355 of the Constitution.

The scope and extent of Article 16(4) has been examined thoroughly by the Supreme Court in the historic case of *Indira Sawhney vs. Union of India*, popularly known as *Mandal case*.[27]

The Union government headed by Prime Minister Sri V.P. Singh issued the office memoranda reserving 27% seat for backward classes in government services on the basis of the Mandal Commission Recommendations. A writ petition on behalf of the Supreme Court Bar Association was filed challenging the validity of the office memoranda and for staying its operation. In her petition, Ms. Indira Sawhney, submitted that the Mandal Commission Recommendations were unconstitutional, illegal and void for the following reasons:[28]

The identification of backward classes and the reservation of jobs in services under the state have been made by a more executive. The identification has been based on indicators which themselves constitute irrelevant criteria and the weightage given are arbitrary and unreasonable and do not disclose any classification which bears a

reasonable nexus to the object of the classification and is thus violating Article 14, i.e. right to equality as enshrined in the Constitution.

It is based on conjectures and surmises because no report of the Technical Advisory Committee or of the Panel of experts has been filed, nor can the same be found from a perusal of the report. The petition further submitted that the identification of 3,743 caste apart from being unconstitutional as being based on castes, is further erroneous on the face of it since the Anthropological survey of India has given figures of 1,130 as castes which could not be traced. The result, therefore, follows that the other remaining castes are non- existent either on the ground of being synonymous. The five judge Bench of the court stayed the operation of the O.M. till the final disposal of the case, on October 1, 1990. Again, the Union Government headed by Sri P.V. Narsimha Rao issued another office Memoranda on September25, 1991, but made two changes in the O.M. of earlier order issued on August 13, 1990.

Added the economic criterion in giving reservation to proper sections of the Scheduled Castes and Scheduled Tribes in the 27% quota. Reservation of another 10% of vacancies for other economically backward sections of higher castes was added. The five judges Bench referred the matter to a special Constitution Bench of 9 Judges in view of the importance of the matter to finally settle. Despite several adjournments the union government failed to submit the economic criteria as mentioned in office memoranda of September 25, 1991. The 9 Judge Constitution Bench of the Supreme Court by 6-3 majority (justice B.P Jeevan Reddy, C.J., M.H. Kania, M.N. Venkatachalliah, A.M.Ahmadi with Pandian and S.B. Sawant concurring by separate

judgments, held that the decision of the union government to reserve 27 percent government jobs for backward classes provided to socially advanced persons- creamy layer among – them are eliminated, it is only confined to initial appointments and not promotions and the total reservation shall not exceed 50% . The Court accordingly partially held the two impugned notifications (O.M.) dated August13, 1990 and September25, 1991 as valid and enforceable but subject to the conditions indicated in the decision that socially advanced persons creamy layer among backward classes are excluded. However, the court struck down the O.M. Sri P.V. Narsimha Rao's government reserving 10 percent government jobs for economically backward classes among higher classes. The majority also held that the reservation should not exceed 50 percent, while 50percent shall be the rule but it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and people.

In view of this, the majority did not express any opinion on the correctness or adequacy of the mandal report. The dissenting judgment was given by justice T.K.Thommen, Kuldeep Singh and R.M.Sahai. The minority struck down the two O.M.'s issued by the Union government as unconstitutional. It held also that Mandal Report is unconstitutional and recommended for the appointment of another Commission for identifying the socially and educationally backward classes of citizens.[29] Dr. Thommen said that whenever and wherever poverty and backwardness are identified it is the constitutional responsibility of the state to initiate economic and other measures to ameliorate the condition of the people residing in those regions. He said that poverty which is the ultimate result of iniquitous and which is the immediate cause and effect

of backwardness has to be eradicated not merely by reservation, but by free medical aid, free elementary education, scholarships for higher education and other financial support free housing, self employment and settlement schemes, effective implementation of land reforms and strict and impartial operation of the law enforcing machinery.

Nani A Palkiwala is of the view that the judgment of the Supreme Court in the Mandal Report will revive casteism which the Constitution intended to end. According to him, future historians of the Indian republic will regard 1992 as one of the sadist year in the history of our jurisprudence. This is the year in which the Supreme Court, by a majority, ensured a fresh lease of life to the cankar of casteism for a long and indefinite future. Over the last thousand years, the greatest curse is casteism, as justice Kuldeep Singh has pointed out in his minority judgment .Historians are argued that the reason why foreign invaders, the Afghans, Turks and the Mughals succeeded in subjugating the country was because casteism divided Indian society and assigned military duties to the one Caste only.[30]

He stated that the majority judgment will revive casteism which the Constitution emphatically intended to and, and the pre-independence tragedy would be re- enacted. Which the rods reserve the erstwhile under privileged would now became the privileged. The majority view will result in the substandard replacing the standard and the reigns of power pass from melricracy to mediocrity. Caste will be given precedence over merit and caliber. Article16 (4) has been virtually re-written by substituting caste by class. The crucial point is that under the majority judgment of the Supreme Court it is the members belonging to

certain castes only, who are eligible to be considered for reservations. When you have removed the creamy layer, what you are left with are still the members of certain castes only. The sections of which all out side those designated castes do not qualify for reservations, however socially and educationally backward they may be. It is disputed that 46 years of independence have changed the social, educational and economic landscape beyond recognition. There are crores of backward castes. By making caste, the essential condition, the majority judgments have included for reservation of all members of backward castes who do not belong to the creamy layer, and excluded all members of forward castes, however, backward and deserving. Such a classification patently discriminated against those who do not belong to these cases which are listed as backward. A backward class may be given the benefit of Article 15(4) or Article 16(4), but the class must consist of a homogenous group- the element of homogeneity should be backwardness characterizing the class. In other words, the link or the thread holding the class together is caste. In other words, a classification may be justified on the ground that it is a backward, class but never on the ground is it a backward caste. This principle was precisely enunciated by the constitution Bench in *Tirloki Nath*[31], *Pradeep Tandan*[32], *Jayshree,* [33] *and Akhil Bhartiya Soshit*[34]. These judgments were cited before the Supreme Court and referred to in the majority judgment without disapproval, but they are inexplicably overlooked.

The majority judgments did not pause to consider the reasons why for all the past decades, the Union Government had not made reservations on caste basis in areas of employment, admissions and promotions. The practice of mentioning the caste in service records was discontinued by

Government of India by 1957. The last census records to proceed on caste basis are those of 1931. Which though hopelessly absolute, were relied upon by the Mandal Commission because they were the latest census records to be proceeded on the caste basis. Gujarat has become the first state in the country to formally accept the Supreme Court verdict on Mandal Commission recommendations, providing for reservations in Government jobs for other backward communities (O.B.Cs). The professional institutions, such as engineering and medical colleges, will now have 17% more reserved seats.[35] The Chief Minister of U.P., Mr. Mulayam Singh Yadav was presented results of Science and Maths teachers selected on 497 posts by Chairman of the U.P Subordinate services selection Commission; Mr. Ram Krishan at the Secretariat Annex. The list contains results of 304 selected candidates belonging to the backward classes and 80 to the scheduled caste. It may be recalled that this is the first result of the subordinate services selection Commission after the implementation of the Mandal Commission report in the state.[36]

The Chief Minister of Madhya Pradesh, Mr. Digvijay Singh announced that 36% of the jobs besides being reserved for the Scheduled Castes/ Scheduled Tribes, only the percent could be reserved for the backward classes. The benefit of jobs reservation would be constantly monitored by the state government.[37] The Chief Minister; Mr. Lalu Prasad Yadav announced 50% reservation for the backward communities in the judicial services to ensure justice for the opposed and downtrodden of the society. The backward people would also be given reservation in the medical and engineering institutions in order to improve their social status. Mr. Yadav was committed to social justice for the oppressed and

downtrodden and with this objective 30 percent of the seats have been reserved for the Scheduled Castes in the Panchayat elections.

Criticizing the 'creamy layer' concept in the reservation policy, Mr. Yadav alleged that it was a conspiracy to weaken the backwards. The Chief Minister demanded reservation for the backwards in the Assembly and Parliamentary constituencies on the basis of their population, on the lines of the Scheduled Castes reservations.[38] The left- front government in west Bengal which had formed a Commission to identity other backward classes (OBCs) Only after a Supreme Court direction finally accepted the caste reality by announcing five percent reservation of government jobs for the OBCs. With this, 33 percent reservation, 22 percent for the Scheduled Castes and 10 percent for the Scheduled Tribes having already been kept apart.[39]

The Delhi Chief Minister, Mr. Madanlal Khurana stated that his government was going ahead with the implementation of the scheme for the free Delhi Transport Corporation Bus passes to college students from Scheduled castes and economically weaker sections and backward classes from 1 August, 1994 as it had been approved by the planning Commission.[40]

Mr. Moily, The then Chief Minister of Government in Karnataka has announced a hike in reservations to 80 percent for jobs and education in the state. The 80 percent reservation quota, the highest for any state in the country, came about following the decision to hike reservations for the Vikkalinga and Lingayat communities, the two most dominant groups of Karnataka. Of the total reservation package, the Scheduled castes have been increased to 57 percent from the earlier 50 percent. The

hike is meant to subsequently benefit the dominant Vokkalinga and Lingayat communities, the urban sections of which had hitherto, been excluded from the ambit of reservation.[41]

The Tamil Nadu Assembly has passed to Bill for continuation of 69 percent reservation in the state in jobs and educational institution. 30 percent seats will be reserved for the backward classes, 20 percent for the most backward and denotified communities, 18 percent for the Scheduled castes and one percent for Scheduled Tribes. The Bill comes in the wake of the Supreme Court order which states that reservation should not exceed 50 percent. To become a law the legislation would have to get the assent of the President of India and the state governor, under Article 31(c) of the Constitution. The State government has been urging the centre to amend the Constitution to ensure the Continuation of the present quantum of reservation.[42]

The Bhartiya Janta Party (BJP), the main opposition party in the Centre, expressed the view that all the States, barring Tamil Nadu and Karnataka, should stick to the Supreme court's ruling in the Mandal case that reservations for the various categories should not exceed 50 percent; the party is in favour of making an exception in the case of Tamil Nadu and Karnataka. Since these two states have had reservations exceeding 50 percent for a long time. In the B.J.P's view, it would be a problem for these two states to curtail their extent of reservation now. Given this backdrop, the B.J.P has favoured Presidential assent to the Tamil Nadu Assembly's unanimous resolution and legislation in support of continuation of the 60 percent reservation in the state for the backward classes and Scheduled castes. The BJP's view point was put across by

senior and opposition leader in the Lok Sabha, Mr.Atal Bihari Vajpayee at the meeting of political parties convened by Home Minister, Mr. SB Chauhan to discuss the issue residing out of Tamil Nadu's demand and its likely implication for other States.

Briefing newsmen, BJP spokesman Mr. Krishanlal Sharma said that Mr. Vajpayee at the meeting, quoted Dr. Ambedkar to the effect that reservations should be of a "minority nature" that is, they should not exceed 50 percent in the interest of equality of opportunity. Having said that, Mr. Vajpayee conceded that the state of Tamil Nadu and Karnatak were on a different footing. It would not be easy for them to bring down the reservations to less than 50 percent now. As such, the Tamil Nadu Legislation for continuing with the 69 percent reservation should be forward to the President for assent.

Mr. Vajpayee, according to the party spokesman, put forth the view that all other states, which do not have reservation in excess of 50 percent right now, should conform to the Supreme Court's pronouncement that the out of limit of 50 percent should be adhered to.[43] The grip of caste on our policy is strong. No political party has had the courage to take a stand against caste based reservation in government jobs. The reaction of various parties is reflected of the extent to which they are steeped in outdated concepts and out of tune with the new India that is struggling to emerge. At a time when the entire trust, is towards individual enterprise and effort, no policy of reservation however, comprehensive and inclusive it seeks to be, can have legitimacy in this eyes of large sections of the educated class. Reservations for the scheduled castes are possibly an exception, though there has been considerable debate on

how effective they have really been serving the needs of the deserving classes. More than the actual jobs in government and public sector units, what is all stakes is the unity and integrity of society. The government's reservation scheme is an admission that the problems of deprivation are not confined to any caste cluster and that the country's economic, social and educational problems effect all groups, irrespective of their caste status. If poor Brahmans, Kshatriyaa, Vaishyas as well as backward castes, scheduled castes are quality for reservations precisely which castes should be excluded from the scheme.[44] Mr. R.P Singh in his Article on identification of backward classes[45] has pointed out the practical problems involved in the identification of backward classes in the absence of data relating to the number of the backward classes and their present social and educational backwardness. The lists of other backward classes prepared by the centre and some of the states are not based on any well defined criteria to measure their social and educational backwardness.

The present system of reservation benefits people belonging to certain arbitrary listed castes and places them on a superior level irrespective of the present social and educational status of individuals of those castes. Son's and daughter's of officers working in government or private sector, judges, ministers and economically better off persons get the benefit of reservation as economic criterion is not considered . Persons belonging to the so- called forward Castes are better in terms of merit than those belonging to the backward classes. These persons are treated as second class citizens and are being oppressed by the government under the pretext of providing 'social justice'.[46] Reservation shall be based on the social, educational and economic status of individuals.

Strict criteria will be laid down to asses the social, educational and economic status of an individual. Those who are declared 'Backward persons' according to these criteria will be given the benefits of reservation. This system will treat all individuals alike as envisaged in Article 15(1) and 16(1) and (2) of our Constitution. Abolition of arbitrary classification of population on the basis of 'caste' is the right step for the survival of our democracy.

If reservations are based on the social, educational and economic backwardness of individuals, all deserving persons will benefited. Differences based on caste will gradually disappear over a period of time. There will be no discrimination on the basis of caste alone, scientifically valid criteria will be used for selecting the beneficiaries of reservation. All citizens will be able to enjoy the benefit of reservation irrespective of their religion, caste, community or language. There is no need to prepare state list or central list of backward classes.[47]

Leaders of political parties who believe in uniting the people of India should give up the present caste based reservation. Reservation for backward persons will be no difficulty in identifying the backward persons as is the case in identifying the backward classes. Intellectuals who are well aware of the divisive nature of the caste system in our society should come together and press the government the government to give up the caste based reservation. This is the first step to reform our society; this will be one of the effective steps for national integration.

Before the commencement of the Constitution of India, a number of provisions and princely governed states enacted laws for eradication of untouchability. To achieve equality in all segments and classes of

society many social reform movement came into being and gathered momentum. Under the Leadership of Mahatma Gandhi, the father of nation, movements were launched for amelioration of the fate of poor and downtrodden. Historically, it is proved that on the eve of Independence, there were twenty seven enactments enacted by provinces and princely governance states for doing away with social disabilities of class of Hindus known as untouchables.[48] To illustrate religious tolerance, wisdom and statesmanship, the Maharaja Travancore's proclamation captioned "Temple entry proclamation" issued in 1936 can be re produced.[49] :

"Profoundly convinced of the truth and validity of our religion believing that it is based on divine guidance and on an all comprehending toleration, knowing that in its practice it has through out the centuries adapted itself the needs changing of time, solicitous that none of our Hindu subjects should by reason of birth of caste or community be denied the consolation and solace of the Hindu faith, we have decided and hereby declare, ordain and command that subject to such rules and condition as laid down for preserving proper atmosphere and maintaining their rituals and observances, there should hence forth be no restrictions on any Hindu by birth or religion on entering or worshiping at the temples controlled by as and our government."

Constituent Assembly debate reveals that Dr. Ambedkar proved crusader for the restoration of human dignity of untouchable. Explaining the concept social democracy he stresses in the constituent Assembly that it means a way of life which recognizes liberty, equality and fraternity which are not to be treated as separate items in a trinity. They

form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty can not be divorced from liberty and equality, be divorced from fraternity. The advocacy of Dr. Ambedkar in process of making the upliftment of untouchables to the level of rest of citizens of India exhausted all possible efforts at his command. He succeeded safeguards to eradicate this social evil.[50]

Article 17 of the Constitution of India abolishes 'Untouchability' and forbids its practice in any form. The enforcement of any disability arising out of Untouchability is to be an offence punishable in accordance with law. It does not stop with a mere declaration but announces that this forbidden Untouchability is not to be hence forth practiced in any form. 'Untouchability' is neither defined in the Constitution nor in the Act. The Mysore High Court has, however, held that the term is not to be understood in its literal or grammatical sense but to be understood as the practice as it had developed historically' in this country . Understood in this sense, it is a product of the Hindu caste system according to which particular section amongst the Hindu had been looked down as untouchables by the other sections of that society. A literal construction of the term would include persons who are treated as untouchables by the either temporarily or otherwise for various reasons, such as suffering from infectious diseases or on account of social observance such as are associate with birth or death or on account of boycott resulting from caste or other dispute. In either case such person can claim the protection or benefit either of Article 17 or of the Act of 1955. In exercise of the powers conferred by Article 35 Parliament has enacted the Untouchability (Offences Act) 1955.[51] This Act was amended in 1976 in order to make the law more stringent to

remove Untouchability from the society. It has now been renamed as, the Protection of civil Rights Act, 1955. The expression civil Right is defined as any right accruing to a person by reason of the abolition of Untouchability by Article 17 of the Constitution. Under the amendment Act, any discrimination on the ground of Untouchability will be considered as an offence. It imposes a duty on public servants to investigate such offences. It provides that if a public servant willfully neglects the investigation of any offence punishable under this Act, he shall be deemed to have abetted the offence punishable under this Act. The Protection of Civil Rights Act prescribes punishment which may extent to imprisonment up to six months and also with a fine which may extend to five hundred rupees or both for any one enforcing, on the ground of Untouchability. Religious disabilities like preventing any person from entering only place of public worship or from worshipping or offering prayers there or social disabilities like access to any shop, public restaurants, hotels or places of entertainment and refusing to sell goods or render services to any person or for other offences, arising out of 'Untouchability'. In *Asiad Project workers Case*,[52] the Supreme Court has held that the fundamental right under Article17 are available against private individuals and it is the constitutional duty of the state to take necessary steps to see that these fundamental rights are not violated. It should be noted that Article 15(2) also helps in the eradication of Untouchability. Thus on the ground of Untouchability, no person can be denied access to shops, public restaurants hotels and places of entertainment or the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public. In compliance with the directive

incorporated in Article 46, Parliament has passed the scheduled castes and scheduled Tribes (Prevention of Atrocities) Act in 1989 which came into force on 30th January 1990. The object of the Act is to protect the weaker sections from the Atrocities committed by the other sections of the society. Also there is provision of special court for speedy trial of the cases of Atrocities committed on Scheduled Castes and Scheduled Tribes by the rest of section of the society. It provides stringent provision as it leaves no discretion to the court regarding imposition of the punishment.[53] the end of justice pre-supposes equality of social status for the Scheduled Castes and it can not be achieved through legal norms, or instruments only. It is a known fact that Untouchability has been declared an offence punishable under the rule of law since 1955. Nevertheless, it is prevalent till date in one form or other. To check the Atrocities, legal norms are there. The prime need of the hour is to change the outlook of the people by other ways and means other than the law. The Scheduled Castes and backward people and their backwardness (socially, educationally and economically) are an open secret. They deserve special treatment and the government is constitutionally empowered to take up special measure for their overall protection and welfare. A well recognized doctrine 'protective discrimination' can be used for the betterment of the Scheduled Castes. This course is necessary to enable them to join the process of special transformation coupled with social justice and equality and the same is urged to get continued till the attainment of the desired goal set by the Constitution of India.[54]

Often it is stressed that the popularity of education amongst the Scheduled Castes and Scheduled Tribes has caused considerable

awareness amongst them. Now they assert their rights and this tendency has invited sharp reactions amongst the upper classes. No doubt, there is an array of the legislative protections, but the desired and deserved goal has not been achieved till now for want of the social acceptance on natural basis by the upper classes. To meat the end of social, economic employment and educational justice for the betterment of the scheduled, a line of balance is urged to be drawn with "A process of leveling down and leveling up" should be observed vigorously.

State is urged to be empowered for leveling down of those who belong to the affluent class and leveling up by extending the special measures (as the state is constitutionally competent to raise the status of those who are socially and educationally backward by the application of the doctrine of protective discrimination) in favour of those who are the weaker sections castes. This leveling process should be continued by adopting the legal course as law is an instrument of the social change and also it is realized on as a means of justice, till both sections reach the line of equality, The Scheduled Castes deserve compensatory discriminatory treatment. This measure is essential to them so that they may be able to join the social march an equal footing. The progress of the nation is bound to suffer if such a large section of our society remains backward. Besides existing legal safeguards, there is need for further safeguards. To meet this, jurists, legislatures, social reformers, sociologists, academicians and judges are urged to formulate the remedial measures for the overall welfare of the Scheduled Castes.[55]

Article 15 (4) was added by the Constitution (First Amendment) Act, 1951. The Amendment itself was the result of certain decisions of courts

which were sought to be negative in their effects. Clause (4) was added by the Constitution as a result of the decision of the Supreme Court in *State of Mad as vs. Champakam Dorairajan*[56]*r*. In this case, the Supreme Court struck down the communal G.O. of Madras government which has fixed the proportion of students of each community that could be admitted into the state medical colleges with the object of helping the backward classes. This very clause is an enabling provision and does not impose an obligation, but merely leaves it to the discretion of the appropriate Government to take suitable action if necessary. The backwardness must be both social and educational. The groups of persons categorized as backwardness. However, it is not irrelevant to consider the caste of class of citizens in determining their social and educational backwardness. Though the caste of a class of citizens may be relevant, its importance should not be exaggerated. Under this clause preferential treatment can be extended to educationally backward classes in the more advanced section of society. Article 15 (4) authorizes the making of special provisions for the advancement of the communities even if such provisions are inconsistent with the fundamental rights guaranteed under Article 29 (2). Thus reservations of seats in educational institutions for students of the backward classes and the Scheduled Castes and Scheduled Tribes are thus covered by Article 15(4). But the state under guise of making special provisions for the advancement of weaker elements in the society, it can not be reserved practically all the seats available in the colleges so that as to exclude admission of the deserving candidates.

Article 16 (1) provides that there shall be equality of opportunity for all citizens in matters relating to employment to any office under the state.

In this clause the general rule is laid down. The rule applies only in respect of employments or offices which are held under the state, i.e. in respect of person holding office as subordinate to the state what is guaranteed is the equality of opportunity. The clause accordingly does not prevent the state from laying down the requisite qualifications for recruitment for government services. It is open to the authority to lay down such pre requisite conditions of appointment as would be conducive to the maintenance of proper discipline among government servants. This clause does not preclude an administrative authority from making a selection from numerous candidates offering themselves for employment; however, the selection test must not be arbitrary. Likewise Article 16 (1) has no applications to persons occupying different grades in the same services. Article 310 (1) must be understood as subject to Article 16(1). Hence, retrenchment of surplus staff can be made in order of seniority but if in such retrenchment political sufferers are exempted, the exemption will be hit by Article 16(1). This Article may be violated by an arbitrary and discriminatory termination of service. This may be first established before Article 16 can have any application. The concept of equality can have no existence except with reference to matters which are common as between individuals between whom equality is predicated.

Article 16(2) lays down specific grounds on the basis of which the citizens are not to be discriminated against each other in respect of any appointment or office under the state. The scope of 16(1) is bigger than the scope of Article 16(2) because discrimination on the grounds other than those mentioned in clause (2) has to be weighed and judged in the light of the general principles laid down in clause (2). The prohibited

grounds of discrimination are religion, race, caste, sex, descent, and place of birth residence or any of them. The word any 'employment or office under the state' make it clear that Article 16(2) also applies only to public employment. There is no constitutional prohibition against private persons or bodies preferring men of one religion over the other making appointments.

Article 16(3) is an exception to Article 16(2) which forbids discrimination on the ground of residence. There can be good reasons for reserving certain posts in a state for its residence only. Such a provision can be made by the legislature. The Public Employment Requirement to Residence Act, 1957 was passed by the parliament. The Act repeals all the laws in force prescribing any requirement in that state or union territory. In respect of Andhra Pradesh, Himachal Pradesh, Manipur and Tripura, the Act prescribes residential qualifications for a limited period in regards to subordinate service or post under the state government or under the control of the administrator.

Article 16(4) is another exception to the general rule embodied in Article 16(1) and (2). It expressly permits the state to make provision for the reservation of appointments or posts in favour of any backward classes of citizens which are not adequately represented in the services under the state. The power conferred can only be exercised in favour of backward classes. The state has to decide which particular class of citizens in backward. In order to apply Article 16(4), two conditions must be satisfied:

i. There must be backward class of citizens which is backward both socially and educationally. That backward class must not be adequately represented in the services under the state.

ii. While ascertaining whether a particular class is a backward class or not the principle laid down *in M.R. Balaji vs State of Mysore*[57] will applied.

Article 16 (5) is the third exception to the general rule as laid down in Article 16(1) and (2) which forbids discrimination in public employment on the ground of religion. Article 16(1) is confined to employment by the state. It does not apply to matters mentioned in Article 16 (5).

Article 15(4) and 16(4) of part 111 and part X1, and schedules V and VI dealing with the uplift of the Scheduled Castes and Scheduled Tribes speak clearly about the substantial and significant contribution of Dr. Ambedkar for the development of the unfortunate untouchables who continue to suffer under the clutches of caste imperialists and religions fundamentalists of modern India. The scheme of protective discrimination was achieved by him to ameliorate the conditions of various depressed and downtrodden sections of Hindu society. Dr. Ambedkar was against the policy of perpetual reservation system for the reason that it would perpetuate inferiority amongst the reserve categories who should develop themselves on the basis of self reliance and self help by developing self confidence but not on the charity of the some body else. Being a great humanist, he always stood for very high human values, dignity of human persons or personalities.

The social problems presented by the existence of a very large number of citizens who are treated as untouchables has received the special attention of the Constitution, and the provisions made by the Constitution, and the provisions made by the Constitution in respect of this problem clearly indicate what importance the Constitution- makers attached to the solution of this social problem. Article 15(1) prohibits discrimination on grounds of religion, race, caste, sex, or place of birth, but sub- articles (3) and (4) of Article 15 provide that not- withstanding the general prohibition contained in Article 15(1), the state would be entitled to make special provisions for women and children, and for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. In other words, the cases of women and children and the cases of persons belonging to the Scheduled Castes and Scheduled Tribes as well as educationally backward classes are treated as an exception to the principles by Article 15 (1). A similar exception is provided to the principle of equality of opportunity prescribed by the Article 16 (1). Article 16 (4) allows the state to make provision for the reservation of the appointments or posts in favour of any backward class of citizens who are not adequately represented in the services under the state. The landmark cases having the direct bearing are duly examined. In *Nain Sukkdas vs. State of U.P.*[58], a law which provided for elections on the basis of separate electorate for members of different religious communities was held to be unconstitutional under Article 15(1). Similarly, in *State of Rajasthan vs. Pratap Singh*,[59] the Supreme Court invalidated the exemption which was given on the basis only of 'caste' or 'religion' and hence it was found contrary to Article 155(1).

In *D.P Joshi vs. State of M.P.*[60], it was held that a law which discriminates on the ground of residence does not violate Article 15(1). Place of birth is different from residence. Similarly, the requirement of a test in the regional languages for state employment, does not contravene Article 15 as the test is made compulsory for all persons seeking employment.[61] A law relating to evacuee property is not repugnant to Article 15(1) though actually most of the persons to whom the provisions of law would apply are likely to be Muslims.[62]

In *Nishi Mangu vs. State of J & K*[63], it was held that the classification for rectification of regional imbalance made without identifying the areas and without lying any objective standard to guide the selection committee in determining the areas of imbalance was invalid. In object of Article 15(2) is to eradicate the abuse of the Hindu social system against which Dr. Ambedkar faught. In *Laxmidhar Misra vs. Rangalal*[64], the privy Council has held that their can not be a dedication only to a limited section of the public like the inhabitants of a village, though such a right can be claimed on the basis of custom.

In *Yusuf Abdul Aziz vs. State of Bombay*, [65] the High court held that the provision not to be repugnant to clause (1) of Article 15. The impugned law was justified on the ground that the discrimination was not based on the ground of sex alone. On appeal, the Supreme Court sustained the provision not as the ground that the discrimination fell out side the prohibition of clause (1) but on the ground that it was covered by clause (3) of Article 15.

While there can be no discrimination in general on the ground of sex, special, provision in the case of women and children the permissible. In

the Yusuf Aziz case above, the special position given to women in regard to the offence of adultery was held valid under Article 15 (3). A government order making women ineligible for the post of a warden in men's jail was upheld as the position of a women would become awkward and hazardous while ensuring and maintaining discipline over habitual offenders.[66]

For Article 15(4) to apply two conditions must be satisfied namely. A class of citizens is backward i.e. socially and educationally and such classes are not adequately represented in the services under the state who are Backward classes is not defined in the Constitution. Article 340 however empowers the President to appoint a commission to investigate conditions of socially and educationally backwardness. The Court can consider whether the classification made by the government is arbitrary or is based on any intelligible and tangible principle. *In Ram Krishna Singh vs. State of Mysore*[67], the Mysore High Court held that the determination of backward classes made in 1957 on the basis of the Census Report of 1941 can not be based on any intelligible changes which had taken place between 1941 and 1959.

In *Balaji vs. State of Mysore*[68], the court held that the sub classification made by the order between backward classes and more 'backward classes was not justified under Article 15(4). 'Backwardness' as envisaged by Article 15(4) must be social and educational and not either social or educational. Though case may be a relevant factor but it can not be a sole test for ascertaining whether a particular is a backward class or not, poverty occupation, place of habitation may all be relevant factors to be taken into consideration. Article 15 (4) does not speak of

'castes' but only speaks 'classes', 'caste' and 'class' are not synonymous. The impugned order, however, proceeds only on the basis of caste without regard to other relevant factors and that is sufficient to render the other invalid. The Court said that the state was not justified in including in the list of backward classes all those castes or communities whose average of student population per thousand was slightly above or very near or just below the state average only those which were well below the average can be regarded as backward. Thus the main defect of the system adopted by the state is that under it 90% of the population of the state is backward. It was held that this was inconsistent with Article 15(4). The state would not be justified ignoring all together advancement of the rest of the society in its zeal to promote the welfare of backward classes. National interest would suffer if qualified and competent students were excluded from admission in institutions of higher education.

In the historic *Mandal case*[69], the Supreme Court by 6-3 majority has held that the sub-classification of backward classes into more backward classes for the purpose of 16(4) can be done. Such classification would be necessary to help the more backward classes otherwise those of the back ward classes who are little more advanced than the more backward classes might walk away with all the seats. This interpretation is equally applicable to Article 15 (4) as the word 'Backward classes' of citizens in Article 16 (4) are wider and include the Scheduled Castes and Scheduled Tribes and other socially and educationally backward classes also on this point of the decision in Balaji case has been disapproved. As regard the limit of reservation, the majority has held that the local reservation shall not exceed 50%. This general rule can be relaxed in

extraordinary situations for population living in far flung areas of the country because of peculiar conditions it is desirable to treat them differently on this point. The Court affirmed *Balaji and Devadasan* Cases.

In *Periakaruppan vs. State of Tamil Nadu*[70]A, the Supreme Court held that classification of backward classes on the basis of castes is well within the purview of Article 15 (4) provided these Castes are shown to be socially and educationally backward. Reservation of seats should not be allowed to become vested interest. The government decision in this regard is open to judicial scrutiny.

In *State of A.P. vs. Balaram*[71], the Supreme Court reiterated and said that caste of a person can not be the sole test for ascertaining whether a particular class or community is backward class or not, yet if an entire caste, as a fact, found to be socially and educationally backward, their inclusion in the list of backward classes by their name is not violation of Article 15(4). If once a class appears to have been reached a stage of progress, from which it could be safely inferred that no further protection in necessary the state will do well to review such instances and suitably revise the list of backward classes.

In *K.S Jayasree vs. State of Kerala*[72], the Court held that neither caste by itself nor poverty by itself is determining factor of Social backwardness. Poverty is the relevant factor in the context of social backwardness, thus both caste and poverty is relevant in determining the backwardness of citizens.

In *State of U.P. vs. Pradeep Tandon*[73], the Supreme Court held that the reservation in favour of candidates coming from rural areas was unconstitutional but the reservation in favour of candidates coming from Hill and Uttrakhand area was valid because they are the instances of socially and educationally backward classes of citizens.

In *Artee vs. State of J & K*[74], the Supreme Court held that classification made for rectification of regional imbalance without identifying the areas suffering from imbalance was vague and arbitrary and therefore violation of Article 15 (4) of the Constitution . It was held that there was no material before the government affording a basis for classifying village as socially and educationally backward areas and hence the classification was arbitrary and unconstitutional.

Similarly in *Suneel Jatley vs. State of Haryana*[75], it was held that the reservation of seats for admission to MBBS and BDS course for students who received education from class I to VIII in common rural schools in preference to students educated in urban schools was held to be violation of Article 15 (4).

In *Padmraj Samarendra vs. State of Bihar*[76], the Patna High court upheld the reservation of 'Cultural Seats' for the admission to the medical college.

In *State of MP vs. Nevedita Jain*[77], the Supreme Court upheld the validity of an executive order of the state Government which had completely relaxed minimum qualifying marks in pre- medical examination for the selection of students of medical colleges of the state in respect of the Scheduled castes and Scheduled Tribes candidates. The

High Court struck down the order as violation of Article 15 (4). On appeal, the Supreme Court held that the regulation relating to conditions to minimum qualifying marks was merely directory and not mandatory and hence the Executive order completely relaxing the minimum qualifying marks was not violation of regulation and Article 15 (4) Under this Article, the state is obliged to do everything possible for the upliftment of the Scheduled Castes and Scheduled Tribes and other backward communities and is entitled to make reservations for them. In the absence of any law to the contrary, it is open to the government to impose such conditions as would make the reservation effective.

In *Amalendu Kumar vs. State of Bihar*[78], the Patna High court held that the reduction of qualifying marks in favour of the Scheduled Castes and Scheduled tribes by an Executive order on the ground that the seats reserved for these categories would remain unfilled was violation of Article 15 (1).

In *Janardan Subbaraya vs. State of Mysore*[79], it was held that the decision in Balaji's case only applied to reservations made in regard to socially and educationally backward classes, and hence reservation made by the Mysore government order in favour of the Scheduled Caste and Scheduled Tribes, were not effected by the decision. It remains valid in spite of the impugned order.

In *Chamoraja vs. State of Mysor*[80], an order reserving 30% of seats in professional and technical colleges for that they did not get adequate representation in the merit pool was held valid by the Mysore High Court. *In Guntur Medical College vs. Mohan Ra*[81], the court held that a person whose parents belonged to a Scheduled Caste before conversion

to Christianity could on reservation to Hinduism be regarded as a member of the Scheduled Castes and Scheduled Tribes only if he was accepted as a member of that caste by the other members of the caste on such acceptance he would be eligible for the benefit of reservation of seats for the Scheduled Castes in the matter of admission to a medical college.

Article 16 embodies the particular application of general rule of equality laid down in Article with special reference for employment and appointment under the state[82]. The character and antecedent for appointments in government services[83], the selective test, however must not be arbitrary. It must be based on reasonable ground and have nexus between the qualifications and the object that is, post or the nature of the services. *In Pandurangarao vs. A.P. Public service Commission*[84], the Supreme Court held the rule which required that only a lawyer practicing in the High Court and the notification issued there under was unconstitutional. There was no reasonable nexus between the qualification and the alleged object of an applicant. Thus a requirement that the professor in orthopaedics must have a post graduate degree in that subject is valid[85].

Equality of opportunity in matters of employment under Article 16(1) means equality between members of the same class of independent classes. Thus in *All India Station Masters Association vs. General Manager, Central Railway*[86], a rule enabling guards to be promoted to higher grade station Master than Road side Station Master was held not to be violation of Article 16 as they belonged to two distinct and separate classes between whom there was no scope for predicating

equality of opportunity in matters of promotion. Similarly Article 16 does not forbid the creations of different standards of promotion are laid down in relation to the same class of Income Tax Officers.

In *C.B. Muthamma vs. Union of India*[87], a provision in services rules requiring a female employee to obtain the permission of the Government in writing before her marriage is solemnized and denying her the right to be promoted on the ground that the candidate was married was held to be discriminatory against women and hence unconstitutional.

In *Randhir Singh vs. Union of India*[88] it has been held that equal pay for equal work although not expressly declared to be fundamental right is clearly a constitutional goal under Articles 14, 16, and 39(c) of the Constitution and can be enforced by the Courts in cases of unequal scales of pay based on irrational classification. This Principle has been followed in member of cases[89] and has virtually become a fundamental right. The doctrine of equal pay for equal work is equally applicable to a temporary or casual employee performing the same duties and functions[90].

But this very principle of 'equal' pay for equal work' has no mechanical application in every case of similar work. More often functions of two posts may appear to be the same, or similar but there may be difference in degrees in the performance. The quality of work may be the same, but quality may be different. Accordingly *in F.A I* C. *and C.E.S. vs. Union of India*[91], it was held that different pay scales fixed for stenographers grade I of central secret rate and these attached to the heads of the subordinates offices on the basis of recommendations of the third pay Commission was not violation of Article 14 and 16 of the Constitution.

Similarly in *State of UP vs. J.P Chaurasia*[92], it has been held that the secretaries of the Allahabad High Court grade I are entitled to a Higher pay scale than the Bench Secretaries grade II as they have to perform such more higher degrees of duties and responsibilities than those performed by the Bench Secretary grade II. Their entitlement to pay is based on selection based on merit cum seniority. Article 16 is not confined to initial matters but will have also applied to matters subsequent to employment as well. However, the principles for determining seniority and promotions must be just, fair and reasonable and not arbitrary[93] to equality of opportunity for all citizens in matters relating to employment is not violated by the provisions for compulsory retirement of government servants after attaining certain age as this does not require any civil requires any civil consequences.

In *K.S Vasudeva vs. Union of India*[94] the court held that where an autonomous agency was dissolved and its work was entrusted to state and Central government agencies and its employees were absorbed in the service of the central government on compassionate ground with consideration of qualifications as compared to the regular servants, the seniority and the benefit given to such employees by giving benefit over the regular servants was violation of Article 14 and 16 because the absorption was not by any legal process. Accordingly, the Court Struck down the order of the central government giving seniority to the Council over the regular employees of the government.

It is to be noted that the two additional grounds i.e. 'descent' and 'residence' are not included in Article 15 while these are added to Article 16 (2) No discrimination can be made on these grounds. This is

just to assure that Parochialism and nepotism is eliminated in matters of appointment in government services. The system of British era have to be eliminated in Independent India and hence this provision in Article 16 (2). 'Descent' is another spot for individual discrimination. In *Dasratha Rama Rao vs. State*[95], the Supreme Court held that the office under the state and discrimination on the grounds of descent only is against Article 16(2).

In *Pradeep Jain vs. Union of Indi*[96], the Supreme Court has held that although in view of Article 16(2) and earlier decisions of the Court, the residential requirement for the medical college in a state is valid and Constitutional but its validity can be tested on the touchstone of Article 14 and if it violates this Article it will be unconstitutional.

In *Narsimha Rao vs. State of A.P.*[97] the Supreme Court decided part of the act unconstitutional which prescribed 'residence' as qualification for government services in Talangana area of A.P. The word 'state' in Article 16(3) signifies whole of the state and not the part of it. Thus Article 16(3) is an exception to clause 16(2) which forbids discrimination on the grounds of 'residence'. In exercise of powers conferred by Article 16 (3), Parliament has passed the public employment (Requirement as to Residence) Act, 1957. It provides that no one will be disqualified on the ground that he is not the resident of a particular state. For Article 16(4) two conditions are to be satisfied namely: the class of citizens is backward, i.e. socially and educationally, and- the said class is not adequately represented in the service of the state.

The second test can not be the sole criterian[98]. In Balaji's case, the Supreme Court has held that the 'caste' of a person can not be the sole test for ascertaining whether a particular class is a backward class or not. Poverty, occupation, place of habitation may all be relevant factors taken into consideration. If the entire caste is found to be socially and educationally backward, it may be included in the list of backward classes. However, the court said that it does not mean that once a caste is considered backward class then it should continue to be backward for all time, the government should review the test and if a class reaches the state of progress where reservation is not necessary it should delete that from the list of the backward classes.[99]

Article 16 (4) must be interpreted in the light of Article 355 which says that claims of the Scheduled Castes and Scheduled Tribes shall be taken into consideration constituently with the maintenance of efficiency of administration. The reservations for backward classes should not be unreasonable. It should be considered having regard to the employment opportunities of the general public.

In *Devadasan vs. Union of India*[100], the Constitutional validity of 'carry forward rule' was challenged. The Supreme Court by a majority of 4 to 1 struck down this rule on the ground that the power vested in the government under Article 16(4) could not be exercised so as to deny reasonable equality of opportunity in matters of public employments for members of classes other than backward. The court said that the reservation for the backward communities each year should not be excessive so as to create monopoly. Accordingly the court held that reservation should be less than 50% depending upon the prevailing

circumstances in each cases .The power of reservation which is conferred on the state under Article 16 (4) can be exercised by the state not only for providing reservation in appointment but also in selection posts too[101]. Thus selection posts can also be reserved for backward classes. In matter of filling selection posts, the question of seniority is not relevant but selection is made solely on merit basis[102].

In *State of Kerala vs. M.N. Thomas*[103], the important question which came up was whether it was permissible to give preferential treatment to the Scheduled Castes and Scheduled Tribes under Article 16 (1) i.e. outside the exception of Article 16(4). A seven members Bench of the Supreme Court by majority held that the classification of employees belonging to the Scheduled Castes and Scheduled Tribes for following them an extended period of two years for passing tests for the promotion from other classes of employees was a just and reasonable classification because the temporary relaxation of test qualification to the Scheduled Castes and Scheduled Tribes was warranted in view of their over all backwardness. Thus according to the majority, reservation for backward classes may be made even outside the scope of 16(4) and therefore rules and order were not violation of Article 14 and 16(2) of the Constitution. This is a new interpretation of Article 16(1).

In *A.B.S.K.Singh vs. Union of India*[104], the Supreme Court following Thomas case upheld the validity of the Railway Board circular under which reservations were made in selection posts for the Scheduled Castes and Scheduled Tribes candidates. The court held that under Article 16(1) itself the state may classify groups or classes based on substantial differentia so the fundamental right to equality of

opportunity has to be read as justifying the categories of the Scheduled Castes and Scheduled Tribes separately from the rest of the community for the purpose of 'adequate representation' in the service under the state. Thus the classification is reasonable because they constitute a class by themselves because of their social backwardness. The court also upheld the 'carry forward rule'. The court held that the reservation of 64.4% was not excessive. As a result of the decision of the Court in Thomas, Akhil Bhartiya Shoshit Karamchari Sangh, Balaji and Devadasan cases have been impliedly overruled. It is submitted that Balaji and Devadasan cases were rightly decided and had laid down correct principles relating to the reservation of the Scheduled Castes and Scheduled Tribes in government services, reservation at initial stage is less harmful than reservation at the stage of promotions. It creates a lot of resentment amongst persons who are denied promotions. Moreover politicians take undue advantage of the ruling and create disharmony and dissentions amongst different members of the society. This is against the interest of the nation and it can only be desired by those vested interests who wish to see people fighting each other. It has provoked a caste war which threatens to tear our social fabric. Thus both legally and socially the policy of reservation can not be justified.[105]

In *K.C Vasanth Kumar vs. Karnataka*[106], the judges of the Supreme Court expressed five separate opinions but a clear guideline is discernible from their opinion which is noted below:

> "The reservation in favour of Scheduled Castes and Scheduled Tribes must continue as at present for a further period of 25 years without application of means test.

Another 15 years it wills so from the commencement of the constitution, a period which is reasonably long for these classes to overcome the baneful effects of social oppression, isolation and humiliation".

The means test is the test of economic backwardness which is ought to be applicable even to the Scheduled Castes and Scheduled Tribes. For other backwardness, two tests should be satisfied– that they should be comparable to the Scheduled Castes and Scheduled Tribes in the matter of their backwardness. That they should satisfy the means test such as the state government may lay down in the context of prevailing economic conditions. The policy of reservation in employment, education and legislative institutions should be reviewed every five years or so. This would afford an opportunity to the state to rectify distortions arising out of particular fact.

In *Indira Sawhney vs. Union of India*[107], which is also known as the Mandal Case, the scope and extent of Article 16(4) has been examined by the Supreme Court. The 9 Judge Constitution Bench of the Supreme Court by 6-3 Majority held that the decision of the union government to reserve 27% government jobs for backward classes provided socially advanced persons. Creamy layer among them are eliminated. It is only confined to initial appointments and not promotions and the total reservation shall not exceed 50%. The court accordingly partially held two impugned notification as valid and enforceable but subject to conditions indicated in the decision that socially advanced persons creamy layer- among Backward classes are excluded. The Court struck down the congress government jobs for educationally backward classes

among higher classes. The majority also held that the reservation shall not exceed 50% but it is necessary not to put out consideration certain extra ordinary situations inherent in the great diversity of this country and people. In such a situation same relaxation of this rule may be necessary. It also held that Mandal Report is unconstitutional and recommended for the appointment of another Commission for identifying the socially and educationally backward classes of citizens. The Court examined the scope and extent of Article 16(4) in detail and clarified various aspects of reservation. The majority held that a caste can be and quite often is a social class in India and if it is backward socially it would be backward class for the purpose of Article 16 (4). There are classes among Hindus, Muslims, Christians and Sikhs and if they are socially backward they are benefited by Article 16(4). Identification of the backward classes can be done with reference to caste.

REFERENCES

1. Mohd. Taj, Caste system in Hindu Society, principle of Social Justice and Constitution of India, (Master Dissertation, 1995) Faculty of Law A.M.U. Aligarh, p. 55.
2. Ibid
3. Ibid
4. Ibid.
5. Id at p. 56.
6. Sachdeva and Gupta, A Simple Study of Sociology (1993, New Delhi), p. 185.
7. Ibid
8. Ibid
9. Ibid
10. Kelker S.V., History of Caste in India (ed. Ist 1984, Jaipur) pp.23 to 36.
11. Dutta N. k., Origin and Growth of Caste in India (1931, Calcutta) p. 15.
12. Kachroo, J. l. and vijay Kachroo, Society in India (1981, Delhi) p. 90.
13. Id. at 91.
14. Ibid.

15. Ibid.

16. Id. at 92.

17. Sharma R.N., Society and Culture in India (1981, Meerut) pp. 21-22.

18. Id, at 23-24

19. Kathi Ranning *vs.* State of Saurashtra, AIR 1952 SC- 123.

20. AIR 1960 SC 1208.

21. AIR 1951 SC 226

22. Jagwant Kaur *vs.* Bombay, AIR 1952 Bom.461

23. Moosa *vs.* Kerala, AIR 1960 Ker. 335

24. AIR 1963 SC.649. Ramkrishna Ram Singh *vs.* State of Mysore, AIR 1960 Mys. 33

25. R.Chiteralekha V. State of Mysore, AIR, 1964 SC 1823.

26. P. Rajendaran *vs.* Madras AIR, 1968 SC 1012.

27. Sukhnandan Thakur *vs.* State of Bihar, AIR 1957 Pat. 617,

28. Banarsi Das *vs.* State of U.P AIR 1956SC 520.

29. M.R Balajive. State of Mysore, AIR 1963 SC 649. Triloki Nath *vs.* State of J & K. AIR 1967 SC 1283.

30. Pandey J.N, Constitutional Law of India (ed. 25th, 1993, Allahabad) P. 110.

31. Tandan M.P., Property of Reservation Based on Prior SC Decision; S CJ Vol. 2 (1992) P.15.

32. Supra, Note 12 at 112.

33. Palkiwala, N.A., Mandal Perpetuates Casteism; The Hindustan Times (November30, New Delhi).

34. AIR 1967 SC 1283.

35. AIR 1975 SC 563

36. AIR. 1976 SC 2381.

37. AIR 1981 SC 298.

38. The Competition Master (March 1994, Chandigarh) p.623.

39. The Hindustan Times (July19, 1954, New Delhi) P.4.

40. The Hindustan Times (June 17, 1994, New Delhi) P.1.

41. The Competition Master (January 1994, Chandigarh) p. 470.

42. The Hindustan Times (July,1 1994 New Delhi) P.7

43. The Hindustan Times (July15, 1994, New Delhi) P 6.

44. The Hindustan Times (July 27, 1994 New Delhi) p. 7

45. The Competition Master (February 1994, Chandigarh) p. 580.

46. The Hindustan Times (Jult14, 1994 New Delhi) p. 460

47. The Competition Master (June1994, New Delhi) p.481

48. The Hindu (April5, 1994, New Delhi) p. 6

49. The Hindu (May3, 1994, New Delhi) p. 7

50. Ibid.

51. Menon, P.S.K., Abolition of Untouchability and Removal of Social Disabilities: An appraisal' YOJNA Vol. 37 No.23 (December 31, 1993, New Delhi) PP.19-20.

52. Ibid.

53. Shabbir, Mohammad, N.E. Khan and Z.A. Khan,' Legal safeguards for Scheduled Castes and Scheduled Tribes: An Appraisal' Lawyer Vol. 25.6 (June, 1994 Madras) P. 229.

54. Devarajjah *vs.* Padmanna, AIR 1958 Mys. 84.

55. People's Union for Democratic Rights vs. Union of India. AIR 1982 SC 1473.

56. Supra Note 35 at 300.

57. Ibid.

58. Ibid.

59. AIR 1963 SC; 226 1951 SCR 525.

60. AIR 1963 Sc 649.

61. AIR 1953 SC 383.

62. AIR 1960 SC 1208.

63. AIR 1955 SC 334.

64. P. Raghunandha Rao *vs.* State of Orissa, AIR, 1955, Orissa, 1131.

65. N.B Nomani *vs.* Dy Custodian of Evacuee Property, AIR, 1951, Mad 930.

66. AIR (1980) 4 SCC 95.

67. AIR 1950 PC 56; 76 IA 271.

68. AIR 1954 SC 121; 1954 SCR 930.

69. Raghubans *vs.* State, AIR 1972 P. H 117.

70. AIR 1960 Mys. 338.

71. AIR 1963 SC 649 Mys, 33, Chitralekha *vs.* State of Mysore, AIR 1964 SC 1823.

72. AIR 1971 SC 2303.

73. AIR 1972 SC 1875.

74. AIR. 1976 SC 2381.

75. AIR 1975 SC. 563.

76. AIR 1981 SC 1009.

77. (1984) SCC 296.

78. AIR 1979 Patna 226.

79. AIR 1981 SC 2045.

80. AIR 1980 Pat. 1.

81. AIR 1963 SC 702.

82. AIR 1967 Mys. 21.

83. AIR 1967 SC 1904.

84. Sukhnandan Thakur *vs.* State of Bihar, AIR 1957 Pat, p.617,

85. Banarsidas *vs.* State of U.P. AIR. 1956 SC, 520.

86. Union of India *vs.* Dr. S.B. Kohli AIR 1973 SC, 811.

87. AIR 1960 SC 384.

88. Kishori *vs.* Union of India, 1962 SC 1139 and also State of Panjab *vs.* Joginder Singh, AIR 1963 SC 963, Champak Lal *vs.* Union of India AIR 1854 SC 1824.

89. AIR 1979 SC 1868.

90. AIR 1982 SC 879.

91. Nakara *vs.* Union of India, AIR 1983 SC 130, P.K. Ram Chandra Iyer *vs.* Union of India, AIR 1984 SC. 541.

92. Daily Rated Causal Labour *vs.* Union of India, 1988, SC 122, Jaipal *vs.* State of Haryana, 1988, 3 SC 354, Dhirendra Chamoli *vs.* State of U.P 1986 1 SC 63, Surindera Singh *vs.* Engineering Chief CPWD, 1986, 3 SCC 91.

93. AIR 1989 SC 19 also State of A.P *vs.* Srinivas Rao 1989 SC 29.

94. J. Kumar *vs.* Union of India, AIR 1982 SC 1064,

95. Union of India *vs.* J.N. Sinha, AIR 1971 SC 40, PR Naidu *vs.* Government of A.P, 1977 SC 854.

96. AIR 1981 SC 1980.

97. AIR 1961 SC 364.,3 SCC 654,

98. AIR 1970 SC 422.

99. Balaji *vs.* State of Mysore, AIR 1963 SC 649, Chitralekha *vs.* State of Mysore, AIR 1964 SC 1823, Triloki Nath *vs.* State of J$ K AIR 1967 SC 1283.

100. AIR 1963 SC 649.

101. State of A.P. *vs.* U.S.V. Balram AIR 1972 SC 1375.

102. AIR 1964 SC 179, and also in B.N. Tiwari *vs.* Union of India, AIR 1963 SC 1430.

103. Dr. J.N. Mishra *vs.* State of Bihar, 1971 SC 1318,

104. AIR 1976 SC 490, 1976 SCC 310.

105. AIR 1981 SC 298.

106. AIR 1985 SC 1495.

107. AIR 1993 SC 477.

Chapter II

EQUALITY AND ITS OBJECTIVES IN CONSTITUTIONAL PERSPECTIVE

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Equality means in one sense that adequate opportunities are laid open to all. By adequate opportunities we can not imply equal opportunities in a sense that implies identity of original chance. Equality is not an imperative to treat in identical ways for men who are unequal in their physical or intellectual attainments. It is a policy of equality of concern or consideration for men whose different needs may require different treatment. It is not a mechanical policy of equal opportunity for every one at any time and in all respect. It is equality of opportunity for all individuals to develop whatever personal and socially desirable talents they posses and to make whatever unique contributions which their capacities permit. It is not a demand for absolute uniformity of living conditions or even for arithmetically equal compensation for socially useful work. It is not a policy of restricting the freedom of being different or becoming different. It is policy of encouraging the freedom to be different or becoming the different. It is a policy of encouraging the freedom to be different, restricting only that exercise of freedom which coverts talents or possession into a monopoly that frustrates the emergence of other free personalities. Equality in the dynamic sense means reduction of the harshest forms of inequality[2]. Article 14 of the Constitution provides that the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India. It uses two expressions: i) 'equality before law' and ii, 'equal protection of laws'. The phrase 'equality before law' is to be found in almost all those written Constitutions which guarantee fundamental

rights. Article 7 of the declaration of Human Rights provides that all are equal before the law and are entitled without any discrimination to equal protection of the law. The expression equal protection of the law occurs in the American Constitution which provides that 'no state shall deny to any person with its jurisdiction the equal protection of the laws'. Both the expressions aim at establishing equality of status. The expression 'equality before the law' is a negative concept employing the absence of any special privilege in favour of individuals and the equal subjection of all classes to the ordinary law. The expression 'equal protection of the law' is a positive concept and implies the equality of treatment in equal circumstances. In the words of Dr. Jennings: 'Equality before law means that among equals the law should be equal and should be equally administered, that like should be treated alike .The right to sue and be sued, to prosecute and be prosecuted for the same king of action should be same for all citizens of full age and understanding without distinction of race, religion, wealth social status or political influence.[3]

The concept of 'equality before law' does not mean absolute equality among human beings which is physically not possible. This very concept implies the absence of any special privilege by reason of birth, creed, or the like in favour of any individual and also the equal subjection of all individual and classes to the ordinary law of the land. The guarantee of equality before law is an aspect of what Prof. Dicey calls the rule of law in England. This means that no man is above the law and every person, whatever his rank or condition, is subject to the jurisdiction of ordinary courts. The rule of law requires that no person shall be subjected to harsh. The object is to secure the paramount exigencies of law and order.[4] the guarantee of 'equal protection of laws'

is similar to one embodied in the 14th Amendment of the American Constitution. This has been integrated to mean subjection to equal law, applying to all in the same circumstances. All persons similarly circumstanced shall be treated alike both in the matter of privileges conferred and the liability imposed by the laws. Equal law should be applied to all in the same situation without discrimination. The like should be treated alike. It is the duty of the state to take special measure to prevent and punish brutality by police methodology. The rule of law embodied in Article 14 is a basic feature of the Indian Constitution which can not be destroyed even by an amendment of the Constitution under Article 368 of the Constitution. The guarantee of equal protection of laws is available to any person who includes any company or association or body of individuals. The protection of Article 14 extends both to citizens and non- citizens and the natural as well as legal persons. Equality before law is guaranteed to all without regard to race, color or nationality. Even corporations which are juristic persons are also benefited by Article 14. There are few exceptions to this rule. Foreign diplomats are immune from the jurisdiction of courts. Article 361 affords and immunity to the President of India and the Governors of the states. No criminal proceedings can be instituted against them during their term of office. No process for their arrest can be issued from any court against them. Persons may be classified into groups and such groups may be for such difference or distinction or differentiation which rests upon reasonable grounds of distinction. A valid classification may be made on geographical or territorial basis, historical considerations, nature of the person concerned, and basis of the nature of business. Beside this a classification which treats the state differently from private

citizens is not hit by Article 14. There can be valid classification with reference to time and finally object of law is also a basis of classification[5]. Laws are violation of Article 14 on the ground that there is a classification without a difference or the basis of classification is irrelevant to the purpose of the Act. A classification based on language, religion, race, sex or place of birth is not permissible. Article 14 of the Constitution says that the state shall not deny to any person equality before the law or the equal protection of the law which within the territory of India. The first expression 'equality before the law' is taken from the English common law which is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. No man is above the law. Every person whatever by his rank or condition, is subjected to the jurisdiction of ordinary Courts. The expression 'the equal protection of the laws' which is rather a corollary of the first expression is based on the last clause of the first section of the 14th Amendment to the American Constitution, which directs that equal protection shall be secured to all persons within the territorial jurisdiction of the union in the enjoyment of their rights and privileges without favoritism or discrimination. Thus Article 14 uses two expressions to make the concept of equal treatment a binding principle of state. It will be difficult to imagine any violation of the expression, "the equal protection of the laws", which would also be a violation of the expression, 'equality before the law" Equality before the law is a negative concept which equal protection of law is a positive one. The former declares that every one is equal before law, that on one can claim special privileges and that all classes are equally subjected to the law of

the land and the latter postulates equal protection of all like in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed.[6] The guiding principle of the Article is that all persons and things circumstanced shall be treated alike both in privileges conferred and liabilities imposed.[7] 'Equality before the law' means that amongst equals the law should be equal and should be equally administered and that like should be treated alike.[8] Hence, what it forbids is discrimination between persons who are substantially in similar circumstances or conditions. Unequal treatment does not arise between persons governed by different conditions and different set of circumstances. The rule is that like should be treated alike and not that unlike should be treated alike. This Article applies to any person and is not limited to citizens alone. A corporation, which is a juristic person, will also be entitled to the benefit of this Article.[9] It is accepted that persons may be classified into groups and such groups may be differently be treated if there is a reasonable basis for such difference or distinction. Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable grounds of distinction. It does not prohibit legislation which is limited either in objects to which it is directed or by the territory within which it is to operate the rule of differentiation is that in enacting laws differentiating between different persons or things in different circumstances which govern one set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different set of circumstances. The principle of equality does not mean that every law must have universal application for all

persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons require different treatment. The rule of classification is not a logical and natural corollary of the rule of equality, but the rule of differentiation is inherent in the concept of equality.[10] The equal protection of the laws guaranteed by Article 14 does not mean that all the laws must be generated in character and universal in application and that the state is no longer to have the power of distinguishing and classifying persons or things for the purpose of legislation.[11] A classification to be valid must not be arbitrary. It should always rest upon some real and substantial distinction bearing reasonable and just relation to the needs in respect of which the classification is made. In order to pass the test of permissible classification, two conditions must be fulfilled. (1) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) The differentia must have a rational relation to the object sought to be achieved by the statute in question, the object of classification must be made in the utmost good faith. Classifications that are scientific and rational, that will have direct and scientific and rational, that will have direct and reasonable relation sought to be achieved yet can be bad because be allowed on the ground that it offends the letter and spirit of Article 14. In such a case, the object itself must be struck down and not the mere classification which, after all, is only means of attaining the desired end.[12] The provision of Article 14 has came up for discussion before the Supreme Court in a number of cases. The decision have established certain important principles which further elucidate the scope of permissible classification. These may be

stated as: [13] (a) A law may be constitutional even though it relates to a single individual if, on account of some special circumstances, or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself, (b) There is always a presumption in favour of the constitutionally of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitutional principles. The person, therefore, who pleads that Article 14 has been violated, must not only has he been so treated differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis and such differential treatment has been unjustifiably made[14], (c) It must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds, (d) In order to sustain the presumption of Constitutionality, the court may take into consideration matters of common knowledge, matters of report, the history of times and way assume every state of facts which can be conceived existing at the time of the legislation, (e) The legislature is free to recognize degree of harm and confine its restriction to those cases where the need is deemed to be the clearest, (f) While in good faith and knowledge of the existing conditions on the part of legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality can not be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or

corporations to be hostile or discriminating legislation, (g) The classification may be made on different basis, e.g. geographical or according to objects or occupations or the like, and (h) The classification made by a legislature need not be scientifically perfect or logically complete.[15] Equality before the law does not require mathematical equality of all persons in all circumstances. Equal treatment does not mean identical treatment. Similarly, not identity of treatment is enough.[16] There can be discrimination both in procedural and substantive law as well Article 14 applies to both.[17] The above principles of Article 14 which embodies the equal protection clause of the Constitution has been invoked in a large number of cases before the Supreme Court. If the classification satisfies the test laid down in the above proposition, the law will be declared Constitutional. We further proceed to the new concept of equality. *In E.P Royappa v. State of Tamil Nadu*[18], the Supreme Court challenged the traditional concept of equality which was based on reasonable classification and has laid down the new concept. Bhagwati J. delivering the judgment on behalf of himself, Chandrachud and Krishna Iyer J.J pronounced the new concept of equality: "Equality is a dynamic concept with many aspects and dimensions and it can not be cribbed, cabined and confined with in traditional doctrinaire limits". In Menaka Gandhi *vs.* Union of India[19], Bhagwati J. again quoted with approval the new concept of equality propounded by him in E.P Royappa case. He said: "equality is a dynamic concept with many aspects and dimensions and it can not be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment". In *International Airport Authority case*. Bhagwati J.

reiterated the same principle in the following words: "It must be therefore now being taken to be well established that Article 14 strikes at is arbitrariness because an action that it arbitrary, must necessarily involve negation of equality. The doctrine of classification which is involved by the court is not paraphrase of Article 14 nor is it the objective and end of that Article. It is legislative or executive action in question which is arbitrary and therefore constituting denial of equality". Thus according to this very doctrine if the action of the state is arbitrary it can not be justified even on the basis of doctrine of classification. Where an act is arbitrary, it is implicit in it that it is unequal and therefore violation of Article 14. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. It is attracted where equals are treated differently without any reasonable basis. In *K.A. Abbas vs. Union of India*[20], the validity of cinematographic Act, 1952 was challenged on the ground that it makes unreasonable classification. It was argued that motion picture is a form of expression and therefore entitled to equal treatment with other forms of expression. The court held that the treatment of motion of picture must be different from that of other forms of art an expression therefore the classification of films into two categories (U films and A films) is a reasonable classification and due to this reason the motion of picture must be regarded differently other forms of speech and expression. In *Nishi Manghu vs. State of J & K.*[21], the Court held that the classification based on regional imbalance was vague in absence of identification of areas suffering from such imbalance and accordingly selection of candidates for admission to MBBS course from this category was arbitrary and violation of Article 14 of the and Constitution hence invalid .But as

regards selection of candidate on the basis of other considerations, the Court held that the classification was valid as it was based on nature and occupation and not on the basis of caste and does not offered Article 14 or Article 15. In *Ajay Hasia vs. Khalid Mujib*[22], the Court held that the allocation of one third of total marks for the oral interview was plainly arbitrary and unreasonable and thus violation of Article 14 of the Constitution. In *Air India vs. Nargesh Meerza*[23], the Supreme Court struck down the Air India and Airlines Regulations on the retirement and pregnancy bar on the services of air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. The court held that the termination of service on pregnancy was manifestly unreasonable and arbitrary and violation of Article 14 of the Constitution. In *R.K Garge vs. Union of India*[24], popularly known as the Bearer Bond's case, the Constitutional validity of the special Bearer Bonds Immunities and Exemptions Ordinance 1981 and the Act, which replaced it was challenged on the ground that the classification made by them was arbitrary and without rational basis and was violation of Article 14 of the Constitution. The Court by 4-1 majority upheld the validity of the classification made by the Act between persons having black money and persons not having black money was based on intelligible differentia having rational relation with the object of the Act. The majority also, rejected the contention that in judging the validity of classification under Article 14 the consideration of morality and others should play an important role, Gupta J. however, dissented from the majority and held that the classification between two classes- tax evaders and honest tax payers- had no rational relation to the object of the Act, and therefore the Act

and the ordinance violates Article 14. He held that in judging the reasonableness of law under Article 14 mortality and ethics have an important bearing. *In A V Nachane vs. Union of India25.* Known as L.I.C. Bonous case, the Supreme Court upheld the validity of L.I.C. Amendment Act, 1981. The Act and the rules were challenged that they were violation of Article 14 of the Constitution as they suffered from excessive delegation of legislature functions. The court held that the 1974 settlement on bonus could only be superseded by a fresh settlement, an industrial award or relevant legislation. But any such suppression could only have future effect and not retrospective effect. In *D.S. Nakara vs. Union of India*[26] the Supreme Court struck down the rule 34 of the central services (Pension) Rule, 1972 as unconstitutional on the ground that the classification made by it between pensions retiring before a particular date and retiring after that date as not based on any rational principle and was arbitrary and violation of Article 14 of the Constitution. In *Mithu vs. State of Panjab*[27] the Court struck down section 303 of IPC as unconstitutional on the ground that the classification between persons who commit murder whilst under the sentence of the imprisonment and those who commit murder whilst they were not under the sentence of the life imprisonment for the purpose of making the sentence of death mandatory in the case of former class and optional in the later class was not based on rational principle. In *Suman Gupta vs. State of J & K*[28] the Supreme Court held that the nomination of candidates of states for admission to the reserved can not be left to the absolute discretion and uncontrolled choice of the state governments. Article 14 is violated by the powers and procedures which results in unfairness and arbitrariness. In *Suneel Jatley vs. State of Haryana*[29], the

reservation of 25 seats for admission to MBBS and BDS course for students who were educated from class I to VIII in common rural Schools was held to be violation of Article 14 and invalid because the classification was arbitrary and irrational. In *Pradeep Jain vs. Union of India*[30], the Supreme Court held that wholesale reservation of all seats in the MBBS and BDS courses made by state government of Karnataka, UP and Union territory of Delhi on the basis of 'domicile' or residence within the state or on the basis of international preference for students who have passed qualifying examination excluding all students not satisfying the residence requirement, regardless of merit was unconstitutional and violates Article14. *In K.Nagraj vs. State of A.P.*[31], the court held that the reduction of age of retirement was not arbitrary and unreasonable and violation of Article 14. In *Surendra Kumar vs. State of Bihar*[32], the Supreme Court quashed the nomination of candidates by the government for the admission to medical college in *state of J & K as* violation of Article 14. The court directed the government to adopt definite criteria and follow pre-defined norm. In *Indian Express Newspapers vs. Union of India*[33], it was held that the classification of News paper into small, medium and big newspapers on the basis of their circulation for the purpose of levying customs duty on newsprint is not violation of Article 14. In *Central Inland Water Transport Corporation Ltd. vs. Brijo Nath*[34], the Supreme Court held that service rules empowering the government corporation to terminate services of permanent employees without giving reasons on three months notice or pay in lieu of notice is violation of Article 14 being unconscionable, arbitrary, unreasonable and against public policy as it wholly ignores the audi alteram parttem rule (i.e. hear the parties). In

Revathi vs. Union of India[35], the Constitutional validity of section 198(2) of Cr .PC and section 497 of IPC which disables the wife from prosecuting her husband for adultery was challenged that it was violation of Article 14 of Constitution. The Supreme Court held that there was discrimination based on sex and these provisions were valid. In *Arti Gupta vs. State of Panjab*[36], it was held that reduction of minimum qualifying marks from 35% to 25% in order to accommodate more Scheduled Castes and Scheduled Tribes Candidates to fulfill the reserved quota is not arbitrary and violation of Article 14 of the Constitution. In *State of Maharashtra vs. Madukar Balkrishna Badiya*[37] the validity of the Bombay Motor Vehicles Tax Act, 1958 as amended by the Maharashtra Act of 1987 and 1988,was challenged, the court held that the Act was violation of Article 14 of the Constitution, In *A.R. Antulay vs. RS Nayak*[38], the appellant challenged the Constitutional validity of the directions given by the supreme court in the *case R.S Nayak vs. A.R Antuley*, (1984) 2 SCC 183. Pursuant to which the case was withdrawn from the special judge and was tried by the High Court which convicted him of certain offence under section 161 and 165 of IPC and Section 5 of corruption Act 1947. It was held that by giving direction the Supreme Court has unintentionally caused the appellant denial of rights under Article 14 denying him the equal protection of law by being singled out for a special procedure not provided by law. The singled out of the High Court for a speedier trial by the High Court for an offence of which the High Court has no jurisdiction and the denial to him the right of appeal to the High Court was found violation of Article 14. In P & T Scheduled Caste /SCHEDULED TRIBE *employees welfare Association vs. Union of India*[39] , the validity of the new policy

of promotion was challenged. The court held that this was discriminatory and violation of Article 14. Deepak *Sibal vs. Punjab University*[40] the appellants challenged the constitutional validity of the admission rule in the evening classes of the three years LL.B course of the Punjab University. It was held that the classification between the government and semi government employees for the purpose of admission to evening class to the exclusion of the other employees was unreasonable unjust and violation of Article 14 of the Constitution *In Bhagwanti vs. Union of India*[41] , it has been held that the classification between marriage during service and marriage after retirement for the purpose of giving family pension is arbitrary and violation of Article 14.

The concept of equality envisages the idea that all men are born free and equal, and there should be no discrimination on the basis of religion, race, caste, sex, colour or creed. Hon'ble Justice Methew emphasized that the claim of equality in fact a protest against unjust, undeserved and unjustified unequalities. It is symbol of man's revolt against chance, fortune, disparity unjust power and crystallized privileges[42] Equality is one of the Human Rights, which was declared in order to maintain humanism in our society. The Human rights are basic socio political conditions to which every human being is entitled. The equality among men means that every citizens physically strong or weak, effective or non- effective, rich or poor, is entitled to equal opportunities along with all other members of the society. In a broader perspective, equality as a principle of distributive justice amounts to no more than that men amounts to no more than that man should all be treated in the same way save where there is a sufficient reason to treat them diffirently.[43] The

value of equality demands the giving of favored treatment to the deprived and the weaker sections of the society, to enable them to complete with fairness and with advanced members of the society. The equality in fact involves an equilibrium creating or equilibrium oriented compensatory discrimination. It takes into account social, economic and educational inequalities by affirmative actions[44].

Equality helps in promoting brotherhood among human beings and it protects status and dignity of all men. It is the foundation of socialistic democracy based on secularism. It requires the state to take action legislative judicial or administrative to provide protection to weaker sections of the society. Equality as an aspect of justice has two phases namely, equality as a means of doing justice and equality as an end of justice. One may accept the notion of equality, social, economic and political as an end of justice. However, it is not practicable to accept the notion of equality without 'protective discrimination'. There are various synonyms used for protective discrimination in legal literature. They are reservation quotas, compensatory treatment or preferential treatment and adventitious aids etc. Protective discrimination is a means of doing justice. The road to distributive justice is a two lane highway, one requiring the equal treatment of the equals and the other requiring the unequal treatment of unequals.[45] In order to discover substantive of distributive justice, it is necessary to establish a body of rights and duties and then to examine them in the light of the formal principle of equality. The aim being to excluded every form of individious' discrimination not justified by relevant differences. The doctrine of equality envisages the idea of protective discrimination in all its manifestations. The notion of protective discrimination aims at unequal

treatment of unequal, i.e. those who were the victim of the man made asperities for centuries together now need to be compensated. Mere proclamation of abstract equality will be of no use to such persons groaning under the object poverty and deadening weightage of backwardness. They need protective discrimination or 'advantious aids' to participate in the mainstream of national life, the way, the Constitution, Vouchsafes and ordains for them. It is the legitimate aspiration of citizens in a welfare state that good education and security of job should be provided to all of them. If no protective discrimination is given to the weaker sections in the matters of education and employment, they will remain as they were and our professions of distributive justice will be a dream and an illusion to be vainly pursued in an organizing atmosphere of unequality ridden society.

Equality naturally gets priority under the Constitution of India in its preamble as well as which deals with the fundamental Rights of the citizens. The most important reason for laying emphasis on this right was due to the prevalence of discrimination on ground of religion, race, or place of birth in large scale during British rule. The fundamental rights guaranteed under the Indian Constitution are not based on the theory of natural rights and reasonable restrictions have been imposed on the exercise of different rights in the interests of community. Pandit Jawaher Lal Nehru in this connection rightly observed that individual can over side ultimately the rights of the community should injure and invade the rights of the individuals unless it to be for the most urgent and important reason[46].

Moreover, it can not be claimed that framers of the Indian Constitution drafted a wholly indigenous or a novel Constitution to achieve this objective of rightly balancing the interest of the individuals with those of the community. Dr. Ambedkar was quite correct when he observed that there could be nothing new in a Constitution framed so late in the history of the world. According to him "in a Constitution framed so late in the day are more apparent than in the formulation of the fundamental rights and specially in setting fourth systematically the rights relating to equality. The Indian society has been traditionally pluralistic and its culture has been defined by a rich variety of diversities. The question of formulating a set of fundamental rights guaranteed right to equality in such a social context, harmonizing the rights of the individual with those of community, could not be free from controversy or confusion. According to Sardar Ballabh Bhai Patel, the Chairman of the advisory committee deserved: "These two schools viewed the matter from two different angels one school of thought considered it advisable include as many rights enforced. The other school considered it advisable to restrict fundamental rights to a few essential things that may be considered fundamental Between the two schools there was a considered to be a very good means.[47] The framers of the Constitution also made it clear that there could be no other fundamental rights of the individual than those guaranteed by the Constitution of part III. Contrary to this, the Ninth Amendment of the Constitution of United States provides that the enumeration of certain rights in the Constitution shall not be construed to deny or disparage others retained by the people. In the absence of such a provision in the Constitution of India, it is logical to sum up that there is no scope for the courts in India to formulate any

more fundamental rights by the application of the doctrines of implied and inherit rights of the individual. The provision of the Indian Constitution relating to right to equality prohibits all kinds of unjustified in equalities. The concept of equality is based on the principle of natural justice that all individuals should be treated alike. In the context of social sciences, the concept of equality refers to some time to certain properties when men are held to have in common but more often to certain treatments which men either receive or ought to receive[48] .The concept of equality is, infact, an indication of the fact that all men are ultimately equal. It is therefore, a noble ideal which provides dignity to all individuals. Nonetheless, the concept does not necessary denote that every one should be treated alike regardless, of individual abilities absolute equality is, infact, an impossibility and what equality really signifies is that among equal laws should be equal and equally administered too. It further denotes that every one who is classified as belonging to the same category, for a particular destination is to be dealt with in the same manner. The concept of equality is closely attached with the concept of justice. This is what the Supreme Court and the High Courts of India emphasize through their various judgments. In the Constitution of India, Right to equality is provided under Article 14, 15,16, 17 and 18.Article 14 lays down the general rule which prohibits the state from denying any person equality before law or the equal protection of the laws. While succeeding Articles 15, 16, 17 and 18 provide particular applications of the Rule. In the Constituent Assembly, provision relating to right to equality were examined in considerable details. The Advisory committee on fundamental Rights dealt only with the equal treatment of laws 'but added the due process' clause regarding

the right to life and liberty.[49] The Drafting committee submitted the term equality before law for equal treatment of law and added a new phase, viz, 'equal protection of the laws'[50]. Originally in the draft Constitution the right to personal liberty was combined together in one Article. But after the second reading stage decision was taken by the Constituent Assembly to provide equality before in a separate Article. The Constitution advocates for the abolition of social disabilities. According to the Advisory Committee, the state not to discriminate against any citizen on the grounds only of religion, race, caste or sex with regard to trading establishments, or the use of wells, tanks, road places of public resort which were maintained partially or wholly by public funds[51] The Drafting committee accepted these non- discriminatory provisions and added the words or any of them to clear any doubtful or double meaning,[52] Some of the members opposed detailed provisions for abolition of social disabilities which according to them could be removed sooner or later by social reforms. Prof. Saxena considered it essential to prepare the ground to give effect to these changes by the Constitution.[53] However, majority of the members were in support of embodying these provisions in the constitution. Somnath Lahiri pointed out that there should be no discrimination either on social grounds, political beliefs and faiths. Hence, he thought an amendment wanted to add the words 'political creeds' under the clause (4) of the interim report on fundamental rights which was not accepted. The Advisory committee accepted for equality of opportunity for all citizens in matter of public employment The state was authorized to legislate suitably to safeguard the interests of such section of society. The Draft committee passed these provisions and added the word 'backward' to signify that class of

people which was not adequately represented in the public services.[54] Some members were of the opinion that the term backward could not be defined in brief and this might create confusion.[55] Aziz Ahmad Khan wanted to drop the word 'backward' altogether but Dharam Prakash was in favour of replacing the term 'backward classes' by 'depressed classes' or 'Scheduled Castes' to make it more clear.[56] On the other hand, *Pt. H.N. Kunzru* opposed to the principle of reservation of seats for backward classes in matter of public empowerment which according to him would lead to social disharmony.[57] He, however, suggested for a time limit for such reservation subject to further extension of the Parliament if considered it desirable. Dr. Ambedkar while rejecting this proposal observed that it was a compromise formula of the three divergent views expressed by the members and the public at large in this connection. These were equality of opportunity for all, no reservation of any kind for any section of the community and due representation to backward communities in the administration. He therefore, claimed that under such circumstances no better formula could be in clause 3 of Article 10 of the Draft Constitution.[58] Advisory Committee had not prescribed residential qualification for public employment through the matter was raised in the constituent Assembly. *A.K Ayyer* wanted to insert a new clause which could empower Parliament to enact a law, if essential for any state to limit a certain class of employment for the residents of that state.[59]T.T Krishnamachari, however considered this suggestion as unnecessary.[60] Dr. B.R.Ambedkar too did not like this idea. He observed that the argument that resident should not be qualification to hold appointments under state is perfectly valid and a perfectly sound argument.[61] Some members objected to the inclusion of

the provision of abolition of untouchbility in dealing fundamental rights. According to them it was a social evil and could not be removed through Constitutional provision unless the caste system was abolished.[62] Dr. S.C.Banerjee observed that the Untouchbility was not a disease, namely caste system.[63] Moreover, there could be no appropriate definition of untouchbility and according to *D.N.Dutta* 'Unless there is a definition it can not be considered as an offence'.[64] Members like R.K.Choudhary and Naziruddin Ahmad vainly tried to define untouchbility but their definition could not be accepted by the house.[65] Finally the provision for the abolition of untouchbility was carried through by the unanimous vote of the Constituent Assembly. Likewise, titles were also abolished under 7 of the interim report on fundamental rights which provided that the Union Government was not to confer any 'heritable title, nor was any person holding any office of profit or trust under the state to have any title from any alien state without the permission of the Government'. However, in the draft Constitution the qualifying word 'heritable' was dropped[66] and a saving clause not being a military or academic distinction was added at the second reading stage.[67] Meanwhile, Bala- krishna Sharma opposed abolition of titles on ground of social tradition of the country and psychology of the people.[68] Another members Mr. Prakash wanted distinction to be made between titles and awards by the state. Award/title by the state should be abolished.[69.] Further more, H.V. Kamath enquired from Dr. B.R Ambedkar whether the abolition of titles was a justifiable rights[70.] The latter replied in the negative and observed that infact it was not a right but a duty upon an individual and a condition of combined citizenship by itself is not a justifiable right.[71]

However, the pursuit for equality and distributive justice has often led to conflicts between the guaranteed individual rights and social justice to people belonging to backward classes and weaker section of the society while the guaranteed fundamental rights are enforceable. The claim to social justice by the members of the backward classes and weaker sections is not enforceable as such, unless the state passes a law in that direction. Since, the Constitution authorizes the state to make preferences for them. While the state to action in implementing the preferential schemes have to encouraged, it has also be seen that in the exercise of the powers the government does not abuse or misuse its power, so as to impair the interest of others. The government has to perform a formidable task of balancing the completing claims of different sections of the society. The harmonization is required to resolve this conflict between 'need and basic claims' of the backward groups to protective discrimination and the rights of the members of the advanced sections to which they became entitled because of their performances, contribution and merit. The Court also performed a tremendous task in ensuring that the protective discrimination is confined strictly to constitutionally permissible objectives and of over seeing that a balance is struck between the fundamental rights of the individual and social justice to the backward classes. The equality in physical sense to achieve physical equality, we often have to resort to the principle of proportion equality which speaks for the treatment of equals equally and unequal unequally and proportional equality speaks for the treatment of equals. In the opinion of Mathew it does not imply that men are identical or equal in intelligence, strength, talent or in many other respects. As a normal principle, its meaning might be summed up

in this way: human beings are entitled to be treated as they are equal on all matters important to them and matters really important to them are matters that are common to man.[72] Rashdall was of the opinion that the principle does not require that every person be given an equal share of wealth or of political power, but rather equal consideration in the distribution of ultimate good.[73] The equality of men means that every citizen of whatever capacity, is entitled to equal consideration from all members of society. Physically strong or weak, effective or non-effective, rich or poor, he is to be regarded as such opportunities of self – development as he is capable of grouping or even to share protection or sustenance of that he is incapable through natural defects or undeserved misfortunes, of maintaining any foothold for himself in society. In a broader perspective, equality as a principle of distributive justice amounts to no more than that men should all be treated in the same way save where there is a sufficient reason to treat them differently. But this version if equality seems to leave open what is to count as a sufficient reason and all kind of invidious distinction could make entry that way.[74]However, belief in this aspect of equality viz, one man should not be feared, to another without sufficient reason, is a deep rooted principle of human thought like other ends, it can not itself be defended or justified other- acts.[75] Plato ' s remarks about law is equally applicable to the concept of equality that a perfectly simple principle can never be applied to state of things which is the reverse of the simple.[76.] Aristotle observed that the origin of all quarrels and complaints can be traced to the fact that the doctrine of proportional equality has been violated, as when equals have been or are awarded unequal shares, or unequal equal shares. He maintained that award should be made

according to merit, but, there is no consensus as to what constitute merit. The differential treatment would be unjustified, if the persons concerned are not distinguishable because in such cases the equals would be treated unequally which will be tantamount to the principle of proportional equality. The doctrine of differential treatment has been expounded by Rousseau thus it is precisely because the force of circumstances tends to maintain it.[77]

John Rawls in his book: "A theory of justice" demands the priority or equality in a distributive sense and setting up of social system so that no one gains or loses from his arbitrary place in the society without giving or receiving compensatory adventures in return. His basic principle of justice is "all social primary goods- liberty and opportunity, income and wealth, and the basis of self- respect are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of least favoured one of the essential element of Rawl's conception of justice is what he calls the principle of redress. This is the principle that undeserved un equalities call for redress, and since inequalities are somehow to be compensated for society must, therefore, treat more favourably those with fewer native assets and those borne into less favourably social positions. Thus, the Rawal's Theory of justice and redress principle furnish an answer to the problem that equality of opportunity must yield equality of Results[78]. In a society, the individuals possess certain needs in common, thus they are to be treated equally until and unless those needs are minimally met. In this context, Laski maintains: Equality therefore involves up to the margin of sufficiently identity of response to primary needs. And that is what is meant by justice we are rendering to each man his own by giving him what

enables him to be man we are, of course there in, protecting the weak and limiting the power of the strong. We so act because the common welfare includes the welfare of the weak as well as of strong. This involves a payment by society to men and women who limp after its vanguard. The equality of state depends on its fair treatment. To act otherwise is to regard them not as person but as instrument.

The value of equality demands the giving of favoured treatment to the deprived and the weaker sections of the society, to enable to compete with fairness with the well to do and more advanced members of the society. Thus, the measures which are designed to promote an effective equality by giving preferential treatment to the un equals and to different from the distributive justice. The equality in fact, therefore, involves an equilibrium creating an equilibrium oriented and compensatory discrimination.[79] The compensatory discrimination notion takes into account social, economic and educational inequalities and seeks the elimination of the existing inequalities by affirmative actions. This policy is justified because unequal characters of human beings are not as a result of innate superiority, but of unequal environment are removed or eliminated. There will be a greater chance to attain a stage of real and effective equality.[80] The call of the moral perspective of equality value is: equals must be treated equally. Un equals must be treated unequally not to perpetuate the existing inequalities but to achieve and maintain a real state of effective equality. The Indian society is a caste- ridden and economically imbalanced society. The strictness of caste barriers from centuries together has led to the social isolation and economic oppression of a section of society. The doctrine of social equality would be meaningful in the Indian society only if protective discrimination 'or

initial advantage' 'or privilege' is given as an equalizer to those who are too weak socially, economically and educationally to avail the advantage of guaranteed freedoms on the footing of equality. It demands equality in fact, which alone can be the basis for social equality. The Indian Constitution makers did provide both doctrines to impart distributive justice to its citizens.[81] According to *Mr. justice Subba Rao* the concept of equality in practice can only be worked out by accepting two principles: (i) to give equal opportunity to every citizen of India to develop his own personality in the way he seeks to do, and (ii) to give aids to the under privileged to face boldly the competition of life. Though these two principles appear to be conflicting but the harmonious blending of both give equal opportunities to all citizens to work out their way to life. Doctrinaire insistence of an abstract equality of opportunity leads to in practice to inequality which the doctrine seeks to abolish.[82] The Indian society is traditionally caste ridden and caste oriented. Therefore, equality in fact, can be realized by treating on the one hand, the forward classes and the under-privileged classes differently. In other words, it is a device of protective discrimination or 'adventitious aid' in favor of the latter which alone can equate them with the former. On the other hand, it requires the removal of all social evil or factors perpetrating social inequality of distributive justice a living reality. A principle of equality under Article 14 of the Constitution provides that the state shall not deny to any person equality before the law or equal protection of laws with in the territory of India. The spirit behind this Article is undoubtedly to secure to all persons, citizens or non- citizens, the equality of status and of opportunity referred to in the glorious preamble of the Constitution. Equality before law is negative concept

which ensures that there is no special privilege in favor of any one. All are equal subject to the ordinary law of land and that one person, whatever, be his rank or condition is no above the law. The concept, equal protection of laws is positive concept. It postulate for the application of the same law alike and without discrimination to all person similarly situated.[83] It denotes equality of treatment in equal circumstances. It implies that among equals the law should be equal and equally administered that the like should be alike without distinction of race, religion, wealth, social status or political influence. All persons are not equal by nature, attainment or circumstances. The varying needs of different classes or sections of people require differential and separate treatment. The state is required to deal with diverse problem arising out of an infinite variety of human relations. It is necessary to have the power of making laws to attain particular ends or objects and for that purpose of distinguishing selecting and classifying persons and things upon which laws are to operate.[84] The state can make reasonable classification in making legislation. The doctrine of classification is only a subsidiary rule evolved by the court to give a political content to the guarantee under Article 14 by accommodating it with the political needs of the society.[85] The classification should rest on real and substantial criteria and should be supported by an intelligible object intended to be pursued by the legislature. The legislature should neither treat unequals as equals, nor equals un equals without any rhyme or reason or intelligible purposive differences relatable to the legislative purpose spelled out by it. The doctrine of classification should not be allowed to eat up the doctrine of equality. Neither the Courts nor the legislature should make anxious and various effort to discover, some how,

somewhere, the basis for classification just to get the enactment declared as Constitutional. The protection of equal laws should not be allowed to be replaced by the protection of law making reasonable classification, otherwise, the guarantee of equality may be replaced by over worked methodology of classification. The Supreme Court has laid down the following principles which should be kept in mind by the judges while deciding the Constitutional validity of laws in reference to Article 14 of the Constitution. That the law may be Constitutional even though it relates to a single individual or institution.[86] That there is always a presumption in favour of the constitutionality of the enactment. That it must be presumed that the legislature understands and correctly appreciates the need of its own people and that its discriminations are based on adequate grounds. That while good faith and knowledge of the existing conditions on the part of the legislature are to be presumed, it can not be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.[87] These very principles have constantly been followed by the Supreme Court whenever it is called upon to adjudge. The Constitutionality of any particular law as discriminatory and violation of Article 14 of the Constitution. The rule of equality within Article 14 and 16(1) will not be violated by a rule which will ensure equality of representation in the services for unrepresented classes after satisfying the basic needs of efficiency of Administration. Article 16(2) rules out some basis of classification including race, caste, decent, place of birth etc. Article 16 (4)'s classification explains that classification on the basis of backwardness does not fall within Article 16(2) and is legitimate for the

purpose of Article 16(1). If preference shall be given to a particular under represented community other than a backward class or community other than a backward class or under represented state in an all India service, such a rule will contravene Article 16(2). A similar rule giving preference to an under represented backward community is valid. Our Constitution aims at equality of status and opportunity for all citizens including those who are socially, economically and educationally backward. The claims of members of backward classes require adequate representation in legislative and executive bodies. If members of the Scheduled Castes and tribes, who are said by this Court to be backward classes, can maintain minimum necessary requirement of administrative efficiency, not only representation but also preference may be given to them to enforce equality and to eliminate inequality. Article 15(4) and Article 16(4) bring out the position of backward classes to merit equality. Special provisions are made for the advancement of backward classes and reservation of appointments and post for them to secure adequate representation. The basic concept of equality is equality of opportunity for appointment. Preferential treatment for members of backward classes with due regard to administrative efficiency alone cum-mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14. Equality of opportunity admits discrimination without reason and prohibits discrimination without reason. Discrimination with reason means rational classification for different treatment having nexus to the constitutionally permissible object.[88]. Laws are violative of Article 14 on the ground that there is a classification without a difference on the basis of classification is irrelevant to the purpose of the Act. A

classification based on language, religion, race sex, or place of birth is not possible. Article 14 of the Constitution says that the state shall not deny to any person equality before the law or the equal protection of the law within the territory of India. The first expression 'equality before the law' is taken from the English common law which is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. No Man is above law. Every person whatever by his ranks or condition, is subjected to the Jurisdiction of ordinary Courts. The second expression 'the equal protection of the laws' which is rather a corollary of the first expression and is based on the last clause of the first section of the 14th Amendment to the American Constitution, which directs that equal protection shall be secured to all persons within the territorial jurisdiction of the union in the enjoyment of their rights and privileges without favourities or discrimination. Thus Article 14 uses two expressions to take the concept of equal treatment a binding principle of state action. It will be difficult to imagine any violation of the expression, 'the equal protection of the laws', which would also be a violation of the expression, 'equality before the law'. Equality before the law is a negative concept, while equal protection of law is a positive one, that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land, the latter postulates equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed[89]

In relation to promoting, "equality of opportunity" could only means subjection to similar conditions for promotion by being subjected

uniformly to similar or same kind of tests. This guarantee was, in fact, intended to protect the claims of merit and efficiency as against incursions of extraneous considerations; the guarantee contained in Article 16(1) is not, by itself, aimed at removal of backwardness due to Socio- economic and educational disparities. Produced by past history of social oppression, exploitation or degradation of class of persons. In fact, efficiency tests, as part of a mechanism to provide equality of opportunity, are meant to bring out and measure actually existing inequalities in competence and capacity or potentialities so as to provide a fair and rational basis for justifiable discrimination between candidates. Whatever may be the real causes of unequal performances which imposition of tests may disclose, the purpose of equality of opportunity, by means of tests is only to ensure a fair competition in securing posts and promotion in government service., and not the removal of causes for unequal performance in competitions for these posts or promotions. Thus, the purpose of Article 46 and 335, which are really extraneous to the objects of Article 16(1), can only be served in such a context by rules which secure preferential treatment for the Backward classes and detract from the plain meaning and obvious implication of Article 16(1) and 16(2) . Such special treatment mitigates the rigor of strict application of the principle contained in Article 16(1). It constitutes a departure from the principle of absolute equality of opportunity in the application of uniform tests of competence. Article 16(4) was designed to reconcile the conflicting pulls of Article 16(1). Representing the dynamics of justice, conceived of as equality in conditions under which candidates actually compete for posts in government service, and of Article 46 and 335, embodying the duties of

the state to promote the interests of the economically , educationally, and socially backward so as to release them from the clutches of social injustice. These encroachments on the field of Article 16(1) can only be permitted to the extent they are warranted by Article 16(4). To read broader concepts of social justice and equality into Article 16(1) itself may stultify this provision itself and make Article 16 (4). The Learned Judge felt that the Backward classes Commission on the basis of whole report the government order has been passed had given good reasons in support of its recommendations . Accordingly the government order was upheld. The Supreme Courts Held:

"If we depart from the view that caste or community is an important relevant factor in determining social and educational backwardness for purpose of Article 15(4) and Article16(4) of the constitution, several distortions are likely to follow and may take us away from the sole purpose for which those Constitutional provisions were enacted. Several factors such as physical disability poverty, place of habitation , the fact of belonging to a freedom fighters family , the fact of belonging to the family of a member of the armed forces might each become a sole factor for the purpose of Article 15(4) and Article 16(4) which were not at all intended to be resorted to by the state for the purpose of granting relief in such cases. While relief may be given in such cases under Article 14, Article 15(1) and Article 16 (1) by adopting a rational principle of classification Article 15(4) and Article 16(4) can not be applied to them. Article 15 (4) and Article 16(4) are intended for the benefit of those belong to caste/ communities which are traditionally disfavored and which have suffered societal discrimination 'in the past. The factors mentioned above were never in the contemplation of the

makers of the Constitution while enacting these clauses.

Equality postulates not merely legal equality but also real equality. The equality of opportunity has to be distinguished from the equality of results. The various provision of our Constitution and particularly those of Articles 38, 46, 335, 338and 340 together with the preamble show that the right to equality enshrined in our Constitution is not merely a formal right or a vacuous declaration. It is a positive right, and the state is under an obligation to undertake measures to make it real and effectual. . A mere formal declaration of the right would not make unequal's equal. To enable all to compete with each other on equal plane, it is necessary to take positive measures to equip the disadvantaged and the handicapped to bring them to the level of the fortunate advantaged .Articles 14 and 16(1) no doubt would by themselves permit such positive measures in favour of the disadvantaged to make real the equality guaranteed by them. However, as pointed out by Dr. Ambedkar while replying to the debate on the provision in the constituent Assembly, it become necessary to incorporate clause(4) in Article 16 at the insistence of the members of the Assembly and to allay all apprehensions in that behalf. Thus, what was otherwise clear in clause (1) where the expression "equality of opportunity" is not used in a formal but in a positive sense, was made explicit in clause(4), so that there was no mistake in understanding either the real import of the " right to equality " enshrined in the constitution or the intentions of the constitution- framers in that behalf. Thus, what was otherwise clear in clear in clause(1) where the expression " equality of opportunity" is not used in a formal but in a positive sense, was made explicit in clause(4), so that there was no

mistake in understanding either the real import of the " right to equality" enshrined in the Constitution or the intentions of the Constitution- framers in that behalf . As Dr Ambedkar has stated in the same reply, the purpose of the clause (4) was to emphasize that "there shall be reservation look into, so to say in the administration. All legitimate methods are available for equality of opportunity in services under Article 16 (1). Article (1) affirmative whereas Article 14 is negative in language. Article 16(4) indicates one of the methods of achieving equality embodied in Article 16(1)[90]

The majority view will results in the substandard replacing the standard and the reins of power passing from metricracy to mediocrity. Caste will be given precedence over merit and caliber. Article 16(4) has been virtually re- written by substituting caste by class. When you have removed the creamy layer, what are left with are still the members of certain caste only. Enforcing machinery.

The basic structure of the Constitution envisages a cohesive, unified, caste-less society- in which casteism petrified for centuries, should become merely the dust on the shelf of Indian History. By ensuring a fresh lease of life to the judgments fractures the nation and disregards the basic structure of the Constitution. The basic structure of the Constitution envisages a cohesive, unified, caste-less society- in which casteism petrified for centuries, should become merely the dust on the shelf of Indian History. By ensuring a fresh lease of life to the judgments fractures the nation and disregards the basic structure of the Constitution. Ambedkar's main objective in the Constituent Assembly was to safe guard the interest of the Scheduled Castes. He said that he

had not the ambition of Drafting Constiton.[91] It was charged the Constituent Assmbly that the Draft Constitution was copy of the government of India Act , 1935 Ambedkar replied that there is nothing to be shamed of in borrowing. It involve nods no plagiarism [92]. In his opinion to apppoint a Constituent Assembly was super flous. The main thing was to delete those sections of government of India Act which were in Constituent with dominion status, The only work in the Constituent Assembly was to find out the solution of the communal problems.[93] According to Dr Ambedkar the Legislature should not be trusted to prescribed the form of the Constitution.He justified that the form of administration must be incorporated in the Constitution.[94] The most important dealing with the citizenship was that it had established a uniform or single system of citizenship for the whole country. This was in striking contrast to the double citizenship prevailing in federal states. Dr Ambedker said that in all the dominion countries, the residents would be divided into three categories. This would mean that the citizens of the dominion residing in India would not be treated as aliens they would have same right which aliens would not have, but they would certainly not be entitled to get full rights of citizenship which was given to the people of India .[95]

REFERENCES

1. Mathew K.K, Poverty Power and Constitution, The Academy law Review p. 9.
2. T.N. Kitchlu, Scheduled Castes and the Problem of Equality (ed. Ist 1972) p. 144.
3. Mahajan, V.D., Constitutional Law of India (ed. 7th 1991) P. 104.
4. Rupinder Singh *vs.* Union of India, (1983) I SCC (Cri) 186 AIR 1983 SC.
5. Supra Note 3
6. State of U.P *vs.* Deoman Upadhyay, (1961) I SCR 14, 33 AIR 1960 SC 1125, 1133.
7. Satish Chandra *vs.* Union of India, AIR 1953 SC 250. 252 1953 SCR 655.
8. Jennings, Law of Constitution (ed 5th New Delhi) P.94.
9. Chiranjit Lal Chowdhry *vs.* Union of India AIR 1951 SC 41: 1950 SCR 869.
10. State of Kerala Vs. N.M. Thomas (1976) 2 SCC 310.
11. Kedar Nath Bajoria *vs.* State of W.B. AIR 1953 SC 404, 406 1954 SCR 30.
12. Bidi supply co. Vs. Union of India 1956 267, 281 AIR 1956 SC 479: Nagpur Improvement Trust Vs. Vithal Rao, (1873) 1 SCC 500. I SCC 500.

13 Ram Krishna Dalmia *vs.* Justice Tendolkar, AIR 1958 SC 538; 1959 SCR 279.

14. Ram Chand Jagdish Chand *vs.* Union of India AIR 1963 SC 563 (1962) 3 SCR

15. Kedar Nath v. State of West Bengal, AIR 1953 Sc 404 1954 SCR 30,

16 State of Bombay v. F.M. Balasara, AIR 1951 SC 318

17. State of Bengal v. Anwar Ali AIR, 1952 SC 75.

18 AIR 1974 SC 555: Menaka Gandhi v. Union of India AIR 1978 SC RD Shetty v. Airport Authority.AIR 1979 SC 1628.

19. AIR 1978 SC 597, RD Shetty *vs.* Airport Authority, AIR 1979 SC 1628

20. AIR 1971 SC 481.

21. AIR 1980 SC. 1975.

22. AIR 1981 SC 487.

23. AIR 1981 SC 1829.

24. AIR 1981 SC 138.

25. AIR 1982 1126

26. AIR 1983 SC 130.

27. AIR 1983 SC 473; (1983) SCC 278.

28. (1983) 4 SCC 339.

29. (1984) 4 SCC 296.

30. (1984) 3 SCC 654.

31. (1985) 1. SCC 524.

32. AIR 1985 SC 87, Suman Gupta *vs.* State of K&K AIR 1983 SC 1235.

33. (1985) SCC 641.

34. AIR 1986 SC 1571.

35. AIR 1988 SC 835.

36. AIR 1988 SC 481.

37. (1988) 4 SSC 290.

38. (1988) 2 SCC 602.

39. AIR (1989) SC 139.

40. AIR (1989) SC 903.

41. AIR 2989SC 2038.

42. State of Kerala v. N.M Thomas, AIR, 1976 SC. 490.

43. Sharma, Sudesh Kumar, Distributive Justice under Indian Constitution (1989) p. 77.

44. Shetty, PK, Fundamental Rights and Socio-Economic Justice in the Indian Constitution, (1969, New Delhi) p. 160

45. Raj Kumar Gupta, "Justice unequal But Insperate" Journal of Indian Law Institute, (1969, New Delhi) p. 57

46. Constituent Assembly Debates, Vol. IX at p. 1194.

47. CAD. Vol. VII at p.37.

48. CAD.Vol. III, at p. 409.

49. Oppenheim, E, International Encyclopedia of Social Sciences, Vol. 5, p. 102.

50. Oppenheim, E, International Encyclopedia of Social Sciences, Vol. 6, p. 121.

51. Ibid

52. C.A.D. vol.VII at p. 659.

53. Article 10 of the Constitution of India

54. CAD. Vol.VII at pp. 681- 82.

55. Id, at pp. 686- 87.

56. Id, at pp.679.-80

57. Ibid

58. CAD. Vol. VII, at pp. 676-77

59. Id. at p-697,

60. Id. at p. 700.

61. C.AD, vol. VIII at p. 403.

62. Ibid.

63. Ibid.

64. CAD. Vol. VII at p. 665.

65. Article 12 of the Constitution of India.

66. CAD, vol. III, at p- 7-8.

67. Id. at p- 453.

68. Id. at pp. 454- 455.

69. C.A.D. vol.VII at p. 708.

70. Id. at p. 709.

71. K.K Mathew, The Right to Equality and Property under the Indian Constitution (1980, New Delhi) p. 2

72. Supra Note 2

73. Tripathi, Legal Theory (1968, Allahabad0, p. 387

74. State of Kerala Vs. N.M. Thomos, AIR, 1076 SC 490 at 573.

75. Ibid.

76. Supra note 36 at 513

77. K.K. Mathew "The Right to equality" IX Journal of Constitutional and Parliamentary Studies (1975) pp. 401-22.

78. A.B.S.K. Sangh Vs. Union of India AIR 1981, SC 298 at 336

79. K.P.K. Shetty, Fundamental Rights and Socio- Economic Justice in the Indian Constitution (1969, New Delhi) 1609.).

80. Ibid.

81. Supra note 45 at p. 76

82. Ibid

83. K. Subba Rao, Fundamental Rights under the Constitution of India (Rt. Hon'ble V.S. Srinivasa Sastri Lecture (1968,New Delhi) p.23

84. Jain M.P., Indian Constitutional Law (1987, New Delhi) p. 471.

85. Ibid.

86. Jagdeesh Swaroop, Constitution of India vol. 1. 1984, at p. 181.

87. Lachman Das vs. State of Panjab, AIR 1963, SC. 222, see also Mittal v. Union of India AIR 1983, S.C.

88. Bhudan Chaudhry vs. State of Bihar AIR, 1958. S.C 358, In Re The special Courts Bill, AIR, 1979, S.C. 478.

89. Ibid

90. Dr. Awasthi & Kataria, Protection of Human Rights (1969, New Delhi)

91. Shoeb Khan Equality through the doctrine of Protective Discrimination under the Constitution with reference to Dr. B.R Ambedkar, Master Dissertation (1994) submitted in the Department of Law, A.M.U. Aligarh p. 75.

92. C.A.D. Vol. VII, p. 38.

93. Ibid

94. Ibid

95. C.A.D. Vol. VIII. 574.

Chapter III

EQUALITY WITH REFERENCE TO THE SCHEDULED CASTE

EQUALITY WITH REFERENCE TO THE SCHEDULED CASTE

The word equality is incapable of single definition as in it's ambit it is multi dimensional It is comprehensive concept having many shades and connotations and it has no one common attributive attempts to identify such attributes are likely to lead to for ranging discussion- discussions of the relations between equality and justice and between equality and liberty.[1] Equality means in one sense that adequate opportunities are laid open to all. By adequate opportunities we can not imply equal opportunities in a sense that implies identity of original chance. Equality is not an imperative to treat in identical ways men who are unequal in their physical or intellectual attainments. It is policy of equality of concern or consideration for men whose different needs may require different treatment. It is not a mechanical policy of equal opportunity for every one at any time and in all respect. It is equality of opportunity for all individuals to develop whatever personal and socially desirable talents they pass and to make whatever unique contributions their capacities permit. It is not a demand for absolute uniformity of living conditions or even for arithmetically equal compensation for socially useful work. It is not a policy of restricting the freedom of being different or becoming different it is a policy of encouraging the freedom to be different, restricting only that exercise of freedom which coverts talents or possession into a monopoly that frustrates the emergence of other free personalities.

Equality in the dynamic sense means reduction of the harshest forms of inequality. Article 14 of the Constitution provides that the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India .It uses to expressions one is' equal before law' and the other is 'equal protection of laws' The phrase 'equality before law' is to be found in almost all those written Constitutions which guarantee fundamental rights. Article 7 of the declaration of Human Rights provides that all are equal before the law and are entitled without any discrimination to equal protection of the law. The expression equal protection of the law ' occurs in the American Constitution which provides that ' no state shall deny to any person with its jurisdiction the equal protection of the laws ' Both the expressions aim at establishing equality of status. The expression' equality before the law' is a negative concept employing the absence of any special privilege in favour of individuals and the equal subjection of all classes to the ordinary law. The expression 'equal protection of the law' is a positive concept and implies the equality of treatment in equal circumstances. In the words of Dr. Jennings' Equality before law means that among equals the law should be equal and should be equally administered, that like should be treated alike .The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinction of race, religion, wealth social status or political influence.[2]. The concept of equality before law' does not mean absolute equality among human beings which is physically not possible. This very concept implies the absence of any special privilege by reason of birth, creed, or the like in favour of any individual and also the equal subjection of all

individual and classes to the ordinary law of the land. The guarantee of equality before law is an aspect of what Prof. Dicey calls the rule of law in England. This means that no man is above the law and every person, whatever his rank or condition, is subject to the jurisdiction of ordinary courts. The rule of law requires that no person shall be subjected to harsh treatment in the securing of the paramount exigencies of law and order.[3] The guarantee of ' equal protection of laws ' is similar to one embodied in the 14th Amendment of the American Constitution. This has been integrated to mean the subjection to equal law, applying to all in the some circumstances. All persons are similarly circumstanced shall be treated alike both in the matter of privileges conferred and the liability imposed by the laws. Equal law should be applied to all in the same situation without discrimination. The like should be treated alike. It is the duty of the state to take special measure to prevent and punish brutality by police methodology. The rule of law embodied in Article 14 is a basic feature of the Indian constitution which can not be destroyed even by an Amendment of the Constitution under Article 368 of the Constitution. The guarantee of equal protection of law' is available to 'any person' who includes any company or association or body of individuals. The protection of Article 14 extends both to citizens and non- citizens and the natural as well as legal persons. Equality before law is guaranteed to all without regard to race, color or nationality. Even corporations which are juristic persons are also benefited by Article 14. There are few exceptions to this rule. Foreign diplomats are immune from the jurisdiction of courts. Article 361 affords immunity to the President of India and the Governors of the states. No criminal proceedings can be instituted against them during their term of office,

No process for their arrest can be issued from any court against them. Persons may be classified into groups and such groups may be for such difference or distinction or differentiation which rests upon reasonable grounds of distinction. A valid classification may be made on geographical or territorial basis, historical considerations, nature of the person concerned, and basis of the nature of business. Beside this a classification which treats the state differently from private citizens is not hit by Article 14. There can be valid classification with reference to time and finally object of law is also a basis of classification.[4]

Laws are volatile of Article 14 on the ground that there is a classification without a difference or the basis of classification is irrelevant to the purpose of the Act. A classification based on language, religion, race, sex or place of birth is not permissible. Article 14 of the Constitution says the state shall not deny to any person equality before the law or the equal protection of the law within the territory of India. The first expression 'equality before the law' is taken from the English common law which is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. No man is above the law. Every person whatever by his rank or condition is subjected to the jurisdiction of ordinary courts. The expression 'the equal protection of the laws' which is rather a corollary of the first expression is based on the last clause of the first section of the 14th Amendment to the American Constitution, which directs that equal protection shall be secured to all persons within the territorial jurisdiction of the union in the enjoyment of their rights and privileges without favoritism or discrimination. Thus Article 14 uses two expressions to make the concept of equal treatment a binding

principle of state. It will be difficult to imagine any violation of the expression, "the equal protection of the laws," which would also be a violation of the expression, 'equality before the law "Equality before the law is a negative concept while the equal protection of law is a positive one. The former declares that every one is equal before law, that on one can claim special privileges and that all classes are equally subjected to the ordinary law of the land, the latter postulates equal protection of all like in the same situation and under like circumstances, No discrimination can be made either in the privileges conferred or in the liabilities imposed.[5] The guiding principle of the Article is that all persons and things circumstanced shall be treated alike both in privileges conferred and liabilities imposed.[6] ' Equality before the law ' means that amongst equals the law should be equal and should be equally administered and that like should be treated alike.[7]. Hence, what it forbids is discrimination between persons who are substantially in similar circumstances or conditions. Unequal treatment does not arise between persons governed by different conditions and different set of circumstances. The rule is that like should be treated alike and not that unlike should be treated alike. This Article applies to any person and is not limited to citizens alone. A corporation, which is a juristic person, will also be entitled to the benefit of this Article.[8] It is accepted that persons may be classified into groups and such groups may be differently be treated if there is a reasonable basis for such difference or distinction. Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable grounds of distinction. It does not prohibit legislation which is limited either in objects to which it is directed or by the territory within which it is to

operate. The rule of differentiation is that in enacting laws differentiating between different persons or things in different circumstances which govern one set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different set of circumstances. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons require different treatment. The rule of classification is not a logical and natural corollary of the rule of equality, but the rule of differentiation is inherent in the concept of equality.[9] The equal protection of the laws guaranteed by Article 14 does not mean that all the laws must be generated in character and universal in application and that the state is no longer to have the power of distinguishing and classifying persons or things for the purpose of legislation.[10] A classification to be valid must not be arbitrary. It should always rest upon some real and substantial distinction bearing reasonable and just relation to the needs in respect of which the classification is made. In order to pass the test of permissible classification two conditions must be fulfilled. (1) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and. (2) The differentia must have a rational relation to the object sought to be achieved by the statute in question, The object of classification must be made in the utmost good faith. Classifications that are scientific and rational, that will have direct scientific, rational, and reasonable relation sought to be achieved yet can be bad because be allowed on the ground that it offends the letter

and spirit of Article 14. In such a case, the object itself must be struck down and not the mere classification which, after all, is only means of attaining the desired end.[11] The provision of Article of Article 14 the Constitution has judicial guaranteed before the Supreme Court is a number of cases. The decision has established certain important principles which further elucidate the scope of permissible classification. These may be stated as follows.[12] (a) a law may be constitutional even though it relates to a single individual, on account of some special circumstances, or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself. (b) There is always a presumption in favour of the constitutionally of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The person, therefore, who pleads that Article 14 has been violated, must not only has been so treated ' differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis and such differential treatment has been unjustifiably made.[13]. (c) It must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. (d) In order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of report, the history of times and way assume every state of facts which can be conceived existing at the time of the legislation. (e) While in good faith and knowledge of the existing conditions on the part of legislature are to be presumed, if there is nothing on the face of the law or the

surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality can not be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to be hostile or discriminating legislation. (f) The classification may be made on different basis, e. g. geographical or according to objects or accusations or the like. (g) The classification made by a legislature need not be scientifically perfect or logically complete.[14] equally before the law does not require mathematical equality of all persons in all circumstances. Equal treatment does not mean identical treatment. Similarly, not identity of treatment is enough.[15] (h) There can be discrimination both in procedural and substantive law as well Article 14 applies to both.[16]. The above principle of Article 14 which embodies the equal protection clause of the Indian Constitution has been invoked in a large number of cases before the Supreme Court. If the classification satisfies the test laid down in the above preposition the law will be declared constitutional. We further proceed to the new concept of equality. In *E.P Royappa v. State of Tamil Nadu*, [17] The Supreme court challenged the traditional concept of equality which was based on reasonable classification and has laid down the new concept. Bhagwati J. delivering the judgment on behalf of himself, Chandrachud and Krishna Iyer J.J pronounced the new concept of equality in the these words.: "Equality is a dynamic concept with many aspects is a dynamic concepts with many aspects and dimensions and it can not be cribbed, cabined and confined " within traditional doctrinaire limits . In *Menaka Gandhi v. Union of India.* [18] , Bhagwati J. again quoted with approval the new

concept of equality propounded by him in E.P Royappa case. He said— Equality is a dynamic concept with many aspects and dimensions and it can not be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrates in state action and ensures fairness and equality of treatment. " *In International Airport Authority* case.[19] Bhagwati J. reiterated the same principle in the following words. " It must be therefore now be taken to be well established that Article 14 strikes at is arbitrariness because an action that it is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is involved by the court is not paraphrase of Article 14 nor is it the objective and end of that Article. It is legislative or executive action in question is arbitrary and therefore constituting denial of equality. " Thus according to this very doctrine if the action of the state is arbitrary it can not be justified even on the basis of doctrine of classification. Where an act is arbitrary, it is implicit in it that it is unequal and therefore violative of Article 14. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. It is attracted where equals are treated differently without any reasonable basis. In *K .A. Abbas V. Union of India.* [20] The validity of cinematographic Act, 1952 was challenged on the ground that it makes unreasonable classification. It was argued that motion picture is a form of expression and therefore entitled to equal treatment with other forms of expression. The court held that the treatment of motion of picture must be different from that of other forms of art an expression therefore the classification of films into two categories (U films and A films) is a reasonable classification and due to this reason the motion of picture must be regarded differently in comparison to other forms of speech and expression. In *Nishi*

Manghu V. State of J$ K. [21], The court held that the classification based on regional imbalance was vague in absence of identification of areas suffering from such imbalance and accordingly the selection of candidates for admission to MBBS course from this category was arbitrary and violative of Article 14 of the Constitution and hence invalid .But as regards selection of candidates on the basis of ' social castes the court held that the classification was valid as it was based on nature and occupation and not on caste and does not offend Article 14 or Article 15. In *Ajay Hasia V. Khalid Mujib* [22]. The Court held that the allocation of one third of total marks for the oral interview was plainly arbitrary and reasonable and violative of Article 14 of the Constitution. *In Air India V. Nargesh Meerza* [23]. The Supreme Court struck down the Air India and Airlines Regulations on the retirement and pregnancy bar on the services of air hostesses as unconstitutional on the ground that the condition laid down there in were entirely unreasonable and arbitrary. The court held that the termination of service on pregnancy was manifestly unreasonable and arbitrary and violative of Article 14 of the constitution. In *R.K Garg V.Union of India* [24]. Popularly known as *the Bearer Bond* ' s case, the Constitutional validity of the special Bearer Bonds (Immunities and exemptions ordinance 1981 and the Act, which replaced it was challenged on the ground that the classification made by them was arbitrary and without rational basis and was violative of Article 14, of the Constitution. The court by 4-1 majority upheld the validity of the classification made by the Act between persons having black money and persons not having black money was based on intelligible differentia having rational relation with the object of the Act. The majority also rejected the contention that in judging the validity of

classification under Article 14 the consideration of morality and others should play an important role, Gupta J. however, dissented from the majority and held that the classification between two classes- tax evaders and honest tax payers- had no rational relation to the object of the Act, and therefore the Act and the ordinance violates Article 14. He held that in judging the reasonableness of law under Article 14 morality and ethics have an important bearing. *In A.V Nachane V. Union of India* [25]. Known as L.I.C. Bonous case. The Supreme Court upheld the validity of L.I.C. Amendment Act, 1981 and the ordinance preceding it. The Act and the rules were challenged being violation of Article 14 of the Constitution as they suffered from excessive delegation of legislative functions. The court held that the 1974 settlement on bonus could only be superseded by a fresh settlement, an industrial award or relevant legislation. But any such supersession could only have future effect and not retrospective effect. In *D.S. Nakara V. Union of India.* [26], The Supreme Court struck down the rule 34 of the central services (Pension) Rule, 1972 as unconstitutional on the ground that the classification made by it between pensions retiring before a particular date and retiring after that date as not based on any rational principle and was arbitrary and violative of Article of 14. of the Constitution . In *Mithu V. State of Panjab* [27]. the Court struck down sec. 303 of IPC as unconstitutional on the ground that the classification between persons who commit murders whilst under the sentence of the imprisonment and those who commit murder whilst they were not under the sentence of the life imprisonment for the purpose of making the sentence of death mandatory in the case of former class and optional in the later class was not based on rational principle. In *Suman Gupta V. State of J$ K.*[28] The Supreme Court held

that the nomination of candidates of states for admission to the reserved seats can not be left to the absolute discretion and uncontrolled choice of the state governments. Article 14 is violated by the powers and procedures which results in unfairness and arbitrariness. In *Suneel Jatley vs. State of Haryana* [29]. The reservation of 25 seats for admission to MBBS and BDS course for students who were educated from class I to VIII in common rural Schools was held to be violative of Article 14 and invalid because the classification was arbitrary and irrational In *Pradeep Jain Vs .Union of India* [30] . The Supreme Court held that wholesale reservation of all seats in the MBBS and BDS courses made by state of Karnataka, Uttar Pradesh and Union territory of Delhi on the basis of domicile " or residence with in the state or on the basis of international preference for students who have passed qualifying examination excluding all students not satisfying the residence requirement, regardless of merit was unconstitutional and violates Article14. In *A.N. Parasuraman Vs State of Tamil Nadu*,[31] the validity of section 3 of the T.N. Private educational Institution (Regulation) Act, was challenged. It was held that the Act conferred unguided power on the authority and therefore ultra vires and illegal.

In *Charan Lal Sahu Vs Union of India* [32] The Constitutional validity of the Bhopal Gas Leak Disaster (Processing of claims) Act, 1985 was challenged, the Court held that the Act is valid as the state is in a capacity for protecting the disabled victims of Bhopal Gas Disaster. In *Gopika Ranjan Chowdhry Vs Union of India,* [33]. It was held that since there was no difference in the nature of work, the duties and responsibilities of the staff working in Battalions Units and those

working at the head quarters. This was discriminatory and violation of Article 14.

In *Mahabir Auto Store Vs Indian Oil Corporation,* [34].The Supreme Court held that the mandate of Article 14 also applies to exercise of states executive power under Article 298 in entering or not entering in contract with individual parties. The decision of the State under Article 298 is an administrative decision can not be challenged on the ground that it is arbitrary and violation of Article 14. In *Delhi Transport Corporation Vs DTC Mazdoor Congress,* [35]. The Supreme Court has held termination of a permanent employee without assigning any reason is arbitrary, unreasonable and hence violation of Article 14 of the Constitution.

In *K.Nagraj V. State of A.P.*[36] The court held that the reduction of age of retirement was not reduction of age of retirement was not arbitrary and unreasonable and violative of Article 14. In *Surendra Kumar V.State of Bihar.* [37] The Supreme Court quashed the nomination of candidates by the Govt. for the admission to medical college in state of J$ K as violative of Article 14 on the ground that nominating candidates. The court directed the Govt. to adopt definite criteria and follow pre defined norm. In Indian Express News Papers *V. Union of India* [38] It was held the classification of *News paper into* small, medium and big newspaper s on the basis of their circulation for the purpose of levying customs duty on newsprint is not violative of Article 14. In *Central Inland Water Transport Corporation Ltd. V. Brojo Nath,* [39] The Supreme Court held that service rules empowering the Govt. corporation to terminate services of permanent employees without giving reasons on three

months notice or pay lieu of notice is violative of Article 14 being unconscionable , arbitrary, unreasonable and against public policy as it wholly ignores the audialteram parttem rule (i.e hear the parties. In *Revathi V. Union of India*[40]. The Constitutional validity of section 198 (2) Cr .PC and section 497 IPC which disables the wife from prosecuting her husband for adultery was challenged that it was violative of Article 14 of Constitution The Supreme Court held that there was discrimination based on sex and these provision were valid. In *Arti Gupta v. State of Panjab* [41]. It was held that reduction of minimum qualifying marks from 35% to 25% in order to accommodate more Scheduled Castes/ Scheduled Tribes candidates to fulfill the reserved quota is not arbitrary and violative of Article 14 of the constitution. *In State of Maharashtra V. Madukar Balkrishna Badiya*[42]. The validity of the Bombay Moter Vehicles Tax Act 1958., as amended by the Maharashtra Act of 1987 $ 1988,was challenged, the court held that the Act was violative of Article 14 of the Constitution, In *A.R. Antulay V. RS Nayak* [43] The appellant challenged the Constitutional validity of the directions given by the Supreme Court in the case *R.S Nayak V. A.R Antuley,* 1984) @ SCC 183 pursuant to which the case was withdrawn from the special judge and tried by the High Court which convicted him of certain offence under section 161 and 165 of IPC. and S.5 of corruption Act 1947. The held that by giving direction the Supreme Court has unintentionally caused the appellant denial of rights under Article 14 denying him the equal protection of law by being singled out for a special procedure not provided by law. The singled out of the High Court for a speedier trial by the High Court for an offence of which the High Court has no jurisdiction and the denial to him the right of appeal

to the High Court violative of Article 14. In *P $ T SC /ST employees welfare Association V. Union of India* [44]. The validity of the new policy of promotion was challenged. The court held that this was discriminatory and violative of Article 14. *Deepak Sibal V. Punjab University* [45] The appellants challenged the constitutional validity of the admission rule in the evening classes of the three years LL.B course of Punjab University. It was held that the classification between the government . and Semi government . Employees for the purpose of admission to evening class to the exclusion of the other employees was unreasonable unjust and violative of Article 14 of the constitution In *Bhagwanti V. Union of India* [46].. It has been held that the classification between marriage during service and marriage after retirement for the purpose of giving family pension is arbitrary and violative of Article 14.

Thus by way of illustration we have discussed a few of the decisions. We have tried to explain the underlying principles of Article 14 which embodies the equal protection clause of the Indian Constitution. Thus the Article 14 has been invoked in large number of cases to the Supreme Court and High Courts. Article 15 and 16 of the Constitution of India are of specific applications of the general right of equality. Article 15 prohibits discrimination on certain specified ground viz, only on religion, race, caste, sex, place of birth or any of them. It is available to citizens only but the prohibition is not confined only to any employment or office under the state . Article 16 guarantees equality of opportunity in matters of public employment and prohibits discrimination on any of grounds mentioned in Article 15 as also on grounds of descent.

Discrimination involves an element of unfavourable bias. If a bias is discussed and is based on any of the grounds mentioned in Article 15 and 16, it may well be that the statute will, without more, incurs condemnation as violating a specific constitutional prohibition, unless it is saved by one or the other provisions, to that Article. But the position under Article 14 is different. Equal protection claims under that Article is examined with the presumption that the state action is reasonable and justified. Article 15 is more general than Article 16 as the latter being confined to matters relating to employment or appointment to any office under the state. Article 15 does not mention descent as one of the prohibited grounds of discrimination as Article 16 does. Since the Indian society lacks homogeneity as there exists differences of religion, Language culture, etc. There are sections of people who are comparatively. Socially and culturally backward and their lot can be ameliorated only when the state makes a special effort to that end. Mutual suspicion and distrust exist between various religious and linguistic groups. To promote a sense of security among the depressed and backward classes to make them useful members of society, to weld the diverse elements into one national and political stream, the Constitution contains a liberal scheme of safeguards to minorities, backward classes, Scheduled Castes and Scheduled Tribes. Provision have been made to reserve seats in the state legislature and Lok Sabha and to make reservation in services for some of these groups to promote the welfare of the depressed backward classes and to protect the language and culture of the minorities. No weightage or special privilege has, however, been accorded to any section or interest in the matter of membership of legislatures. In addition the Constitution sets

up institutional machinery has been put on service to over see that these safeguards are properly effected by the various government agencies or bodies in the country.

Real contribution of Ambedkar is reflected in the protective discrimination scheme or the reservation policy of the government envisaged under some provisions of part III (Fundamental rights) and in many part IV Directive Principles of State Policy) provision dealing with the constitutional mandate to ameliorate the conditions. Of the Scheduled Castes and Scheduled Tribes. Dr Ambedkar who was described by Beverley Nichols as one of the six best brain in India was luckily the Chairman of the Drafting Committee of free India's republican Constitution. He ensured that caste would be anathema to our noble construction and trove single mindedly to bring about the social integration in India. According to Dr. Ambedkar Fraternity means a sense of common brotherhood of all Indian being one people. Castes are antinational in first place they bring about separation in social life . They are antisocial because they generate jealously and antipathy between caste and caste. But we must overcome these difficulties if we wish to become a nation of reality. For fraternity can be a fact only when there is a nation. Without fraternity- equality and liberty will not deeper than coasts of paint after celebrating the century of Dr. Ambedkar's birth in 1891 we have now impaired and desecrated his greatest monument the Constitution of India.

Scheduled Caste is the most recent of a long time of officials euphemism for 'Untouchable' The Scheduled Caste category is intended to comprise those groups isolated and disadvantaged by their

untouchbility' i.e. because of their low status in the traditional Hindu caste hierarchy which exposed to them ill treatment severe disabilities, and deprivation of economic, social, cultural and political opportunities. In the early years of the century the depressed classes' (as they were then called) became an important focus of concern among the reformers. Proposals for special legislative representation for these very classes propelled' untouchbility into political area. As concern about these groups grew, the political demands were made on their behalf. On this there was sharp disagreement about the number of persons who belonged in this category.

The expression Scheduled Caste was first coined by the Simon Commission and embodied in the government of India Act, 1935. Prior to it, the people belonging to the last '*Varna*' viz. *Shudra* and *Varna* were regarded untouchable caste. *Varna* means one who do not belong to *Varna*' or exterior castes. Here exterior signifies those groups of classes who were required to stay outside the village settlement. The worst part of the matter is that the concept of pollution was attached to these set of classes, as a result of this they were hated and subjected to social and economic inequality for ages, official figures of 193. Census has shown as depressed classes in the record of British India. Gandhiji named people of these classes i.e. *Shudra* and *Varna* or 'Untouchables' As a result there was an agitation to the Bill using the word '*Harijan*' in the Bombay Legislative Assembly. Subsequently in 1938, the word '*Harijan*' was replaced by word Scheduled Caste, since then this word continued to be used in Government records and notifications, issued from time to time. In 1936, the government for the very first time published a list of Scheduled Castes. This very list was taken into

account for providing certain protections and safeguards to these masses. Scheduled Castes lie at the bottom of social hierarchy and they were considered out side the *Varna* schemes. They were characterized by convergence of multiple marginalities and commutative inequalities by the upper caste. Economically they were the poorest of the poor who engage them selves in degrading occupation; socially they could not adopt the cultural and religious values of upper caste due to social sanctions. Any attempt of the Scheduled Caste to violate the Social norms to change the style of life and to assert for their civil rights was resisted and resented by the upper castes. In a nutshell low rank and exploited conditions of the Scheduled Castes emanate from commulative inequalities in economic, political and ritual systems.[47]

The leaders of Indian National Congress, especially Mahatma Gandhi, stood for the , reconciliatory and cooperative modal of political mobilization of untouchables who were named as *Harijan*s' (Children of God) He insisted *Harijan*s should be treated as Hindu society, In fact he wanted that they should be integrated into Hindu society and the need for incorporating them in political struggle of independence by abolishing the stigma of untouchability associated with them on the other hand Dr. Ambedkar organized the Scheduled Castes politically to sharpen their identity as a category in relation to the upper strata so that they could fight for their rights. Due to moderate and militant approaches of Gandhiji and Dr. Ambedkar, the principle of reservation for the Scheduled Castes was well incorporated into government of India Act, 1935, where untouchables become to be known as scheduled castes for the purpose of statutory safeguards and other benefits. In the post independence India, the founding fathers of Indian Constitution

took a historic step by abolishing the stigma of untouchbility associated with Scheduled Caste not only by granting them equal rights with other citizens but also by ensuring them special privileges for educational, economic and cultural upliftment to enable them to catch with those who were ahead of them.

The Constitution makers eschewed connotative definition of untouchbility and adopted the some sort of solution as had the British. Lists were to be compiled for each area of those castes which were regarded as needful and deserving preferential treatment rather than provided any standard of section for those groups beyond the general under standing that they were the 'untouchables' The Constitution provided only a procedure for designating them. The president is empowered to specify, after consulting with the Governor of the state, Those castes, races or tribes or groups within castes, races and tribes which shall for the purpose of the constitution be deemed to be Scheduled Caste in relation to that state.[48] Once this list is promulgated it can only be changed by the Act, of Parliament.[49] A Scheduled Caste order was promulgated by the president in 1950 The major addition were four Sikh Castes and the provision for the first time of list for areas which were not previously. They were Rajasthan, Gwalior and Madhya Bharat. These were few changes in 1951, but these were in the nature of adjudgments and elimination of anomalies rather than any basic changes in policy.[50] The 1951 census revealed that the scheduled castes contain over 52. million members, but due to more discrepancies, errors, and oversights, in 1956 the list was not revised again.[51]

The changes were the addition of about one million persons each in

Rajasthan and in Uttar Pradesh and the inclusion now of all Sikh untouchables. The revised list contain 55.3 millions including 1951 census figures. In 1971 Census, the Scheduled Castes contained 80 millions. The changes in the list have been more in the nature of removing anomalies and correcting oversights, moving group from Scheduled Caste to Scheduled Tribe list sorting out discrepancies and errors, rationalizing administration. There have been no policy departures other than inclusion of Sikhs. Indeed there have been no further attempt to formulate any criterion. In the first report, the Commission for the Scheduled Castes and tribes observed Hutton's 1931 census criteria which appears to hold good for purpose of specifying the Scheduled Castes. [52] In the late 1950's the Commissioner remarked that the criteria for classifying caste as Scheduled Castes were fairly definite.[53] Formally, the power to make and change the list lay with the president (and later with the Parliament) , but it appears that the dominant role was played by the executive, Central and state. The lists renamed in change of the ministry of Home affairs except fair an interval from 1964 to 1973 when this task was housed in the erstwhile department of social security (later social welfare) [54].

Although the role of the state is formally consultative designation seems in fact to be a two stage process in which center or state proposes and attempts to get consent of the other. Where the state is unwilling, listings favoured by the centre can be held up for years. On the other hand, in the list especially inclusions, these have been rejected for lack of any supporting data.[55] The selection of Scheduled Castes has proceeded without benefit of single connotative definition. The selection has been done as the basis of' untouchbility which was measured by the incidence

of social disturbances. This criterion has been combined in varying degrees with economic, occupational, educational, residential and religious lists. The resulting list designates all of these groups who in the view of Parliament require the special protections provided by the Constitutions. It defines who may stand for reserved seats and enjoy benefits and reservations for the Scheduled Castes. But this does not means that every person or groups of untouchable by any conceivable definition. It basically omits some groups which historically suffered disabilities (e.g. Ezhuvas) or which would be untouchables in terms of 1931 census lists. And it includes Non- Hindus (after than Sikhs) who clearly seen to be untouchables within the judicial test of ' origin' in a groups considered beyond the pale of the Caste system.[56] There is no single inclusive list of all groups considered untouchable just as there is no single criterion for identifying them. In the absence of a definite criterion the lists have renamed stable for more than 30 years some groups continue to petition for inclusion. The Commissioner observes that there has been a tendency of some castes and communities to use every opportunity for pressing their claims for inclusions in the lists of the Scheduled Caste/ Scheduled Tribes.

The changes that have accused have been rationalized and extensions of existing criteria to overlooked groups and areas previously omitted, rather than any change in criteria, besides this there have not been any significant exclusion with the exceptions of the voluntary departure of converts to Buddhism. There has been no litigation for inclusion or exclusion of any groups challenging the untouchbility criterion or its application but there has been litigation on the religious and residence tests. [57].With whatever be the other factors, the Scheduled Castes have

been chosen by the criterion of low social and ritual standing. In the selection of other backward classes, the use of social and ritual status as criterion of the backwardness of the group has been severely restricted by the courts. But such criteria has been predominant in the primarily chosen precisely on the ground of their low status (social and ritual) in the traditional social hierarchy. The justification for employing low status and attendant disabilities as criterion for preference is that these groups are generally lowest in income. . These very castes are backward because they are subjected to disabilities which embedded advancement by individual effort and denied them opportunities for groups for social mobility.[58] This emphasis has endured over the years. In the debate proceeding passage of the 1976 amendments to be Scheduled Castes issue surfaced and it was basically the economic and social and social backwardness of a caste which should be entitled to be categorized as a Scheduled Caste.[59] But the Home minister was emphatic in reiterating that the concept of Scheduled Caste in one of backwardness stemming from untouchbility "It is not neglect, it is not mere poverty, it is not mere backwardness that entitle a man to come under the Scheduled Castes.[60]

However, the legislative prohibition of disabilities and social practice resulted in lessoning of disabilities and to the extend that preferential treatment increases educational attainments and economic opportunities, correlation between low ritual standing and economic and social backwardness will be weakened. If 'untouchbility is a useful criterion for identifying those groups which are at the bottom in terms of economic educational and cultural resources of opportunities. The very success of redistributive measures might lead to a discrepancy between

ritual standing and other indica of backwardness. The Parliament has power to designate Scheduled Caste to permit the use of standards which would decrease the role of ritual standing and disabilities and increase the emphasis on educational, economic and cultural criteria In June 1965, a committee was appointed by the government to advice on revision of existing lists of the Scheduled Caste and Scheduled Tribe under the chairmanship of B.N. Lokur, the law secretary. The Lokur committee reported promptly on 25 August 1965. . The committee noted with satisfaction that untouchbility was disappearing, partially in cities and towns, and even where it is practice, it is considerably in dilated form. [61] The observed that the line of demarcation between high and low castes was fairly clear in the past, has tendered to become blured.[62]

The committee devoted most of its attention to many technical changes in the list, including a number of minor exclusions. On major de-scheduling they curiously omitted to utilize any of the fresh and abundant 1961 census data. Instead they cautiously put forward a list of communities adjudged to be relatively forward by several persons who appeared before us including eminent social workers. In addition to 14 tribes this list included 28 Scheduled Castes , ranging from the insignificant to such numerous groups as the Chamaras (Bihar, UP, and Panjab) and the related Jatav (MP), the Dhobis (West Bengal, Orissa Bihar & UP, the Maharas (Maharashtra & MP) the Namasudras and Rajbanshis of Bengal. In a kind of dim reflection of the disputes of the early 1930's the proposals would have left the Southern Scheduled Caste virtually intact, but practically halved the Scheduled Caste population in the North. In addition it would have eliminated about a fifth of the Scheduled Tribes. The report was received with angry

resistance by the Scheduled Castes spokesman. At a tumultuous meeting with the law Minister, the Scheduled Caste members of the Parliament agreed with the few inclusions but would not countenance by exclusions to have retreated. Scheduled Caste leaders and government officials concurred that the report was dead.

After 1967 election, the question was raised once again with the added dimensions of the impending debate on whether to extend the reserved seats, due to expire in 1970, in the meantime, congress (the principal political beneficiary of reserved seats) had become considerably more dependant on the adherence of the occupants of the reserved seats, who now supplied its much narrower plurality in the Lok Sabha. The congress plurality was 38 seats (279/ 528) and congress held 72 of the reserved seats [63]. On August 12 1967, a bill to amend the lists was introduced by the government, the bill proposed list which included every one of the groups whose possible delection has been suggested by Lokur committee. A joint Parliamentary committee was established to review the lists submitted its report in November 1969, Among the amendments proposed by the joint committee were the inclusion in Scheduled Castes the women who married scheduled caste men, the exclusion from scheduled tribes of converts to Christianity and Islam, and elimination of all area restrictions on Scheduled Caste status. The conversion provoked great controversy, and neither it nor the removal of area restrictions were accepted by the government, which proposed a host of amendments to joint committee's version when the bill was taken up in November 1970, named in controversy, The bill laps with the dissolution of the fourth lok Sabha in December 1970, During emergency rule in August 1976, a new version eliminated most

intrastate area restrictions adding about 2.5 million to the scheduled castes population and over 3 millions to the Scheduled Tribes.[64]

Apart from this, the Act maintained a status quo; as there were no significant inclusion or exclusions. It did not address any of the touching issues of proposal status (of wives, converts or migrants) which had come to surround the application of the lists; Caste remained the primary basis for designating the scheduled castes. Castes in the sense of social units are listed, and it is caste in sense of rank or status in the social religious hierarchy which is the criterion for choosing these groups. But caste is not the only factor in the selection .Scheduled castes are designated by the state and some times by districts or regions within the states. The same caste may be scheduled in one state but not in adjoining district. The power of the president to specify Scheduled Caste by districts had been upheld on the ground that the social and educational backwardness of a groups may vary in degree in different areas.[65] Specification by states has been held to be constitutionally required. A postal clerk residing and working in Orissa was a member of a konda kapus, a group listed as a scheduled tribes in neighboring Andhara Pradesh, but not in Orissa. After being appointed to a higher post against a reservation for scheduled tribes, he was reverted on the ground that konda kapus was not a Scheduled Tribes in Orissa where he was permanent resident, He argued that he should be counted as Scheduled Tribes anywhere for purposes of central government employment,.[66]

The High Court turning to the Constitutional provision for designating scheduled tribes (Article 242(1)) finds that the phrase "shall be deemed

to be Scheduled Tribes in relation to that state "means that in order to get the benefit of being a member of a Scheduled Caste or Scheduled Tribe in the matter of public employment, the person claiming it should be a member of such caste or tribe in relation to the particular area or state where he is residing and where he seeks employment. Thus the court takes a restrictive reading of residence rules to be a constitutional requirement. On number of occasions, official and political leaders have taken the view that a constitutional amendment could abate these restrictions.[67]

However, these have been some problem in the area limits as to whether they correspond with any exactness to the different deprivations and need. More troubling still are the difficulties presented by cases of especially mobile members of the Scheduled caste and Scheduled Tribes. According to the Scheduled Caste order Caste shall be deemed to be the Scheduled Castes so for as regards members there are resident in the localities specified in relation to them respectively. The Commissioner of Scheduled Caste and Scheduled Tribes in his first report in 1951 observed that the provision was ambiguos.[68] If the example of Khatik Caste, which is a Scheduled Caste in Panjab but not in neighbouring Uttar Pradesh, the question arises of UP Khatik moves in Panjab where this caste is considered as a Scheduled Caste, can be a member of scheduled caste or not if a Panjab Khatik moves to UP, no longer remain a member of Scheduled Caste in relation to Panjab or in relation to concessions granted by the central government. The Ministry of law in a strikingly unhelpful interpretation said that each case will have to be decided on its facts. But since "residing at time in question was the determinig factor" They concluded that Panjab Khatik would

not be a Scheduled Caste while residing in UP.[69] The Commissioner's example contains a series of puzzles. First, there is the out migration problem, suppose X leaves a state where X is a Scheduled Caste and goes to a state where they are not so listed. Such persons are excluded from any benefits by the prevailing reading of the order. Thus a Dusath who moved his residence from Bihar where this caste was a Scheduled Caste which in Madhya Pradesh it was not a member of the Scheduled Castes for purposes of making a lower deposit when filling a nomination paper.[70]. The same rule applies to intra state territorial limitations. A railway worker resident out side the Taluks listed for his tribe was denied eligibility for reservation in promotion.[71] There is a converse problem of in- migration Suppose a member of group X migrants from an area in which the X is not Scheduled to an area in which they are. Here the resident list stressed by the courts and officials would seem to argue for inclusion, but the one court that had addressed it decided the other way. 'Suryabashi' was listed as a scheduled caste in Jabalpur District, but a Suryabanshis migrant to Jabalpur who hailed from an area where Suryabanshis were not scheduled was held ineligible for benefits on the ground that 'only Surbanshis residing in Jabalpur District were declared to be scheduled Caste under the presidential order.[72]

Apparently the Court is looking beyond residence to some notion of origin in the designated groups, a test that proved insufficient in the out going migration cases. These very issues are decided entirely by textual interpretation without consideration of policies which might provide some guidance here. For example, migration involves the enlargement of the number of beneficiaries, where as out- migration does not. Again,

extensions of benefits to in migrants might induce mobility that was not otherwise economically Justified moves. The logic of these cases points to an even more grotesque result in the case of lateral movement, Suppose a member of group X migrates from state A where the groups is scheduled to state B where the groups is scheduled . According to the residence agreement of the out migration cases, he is no longer entitled to any benefits as an X of state A. Nor according to the origin agreements of the in- migration case, he is entitled to any benefits as an X of state B. One suspects that administrative failure to give full effect to the logic of cases, perhaps augmented by some dissimulation on the part of the migrants, has tempered the effect of these rules and accounts for the infrequency with which these issue have come to court.

The migrant members would lose their Scheduled Caste benefit remained troubles one. In 1959, the Commissioner raised the matter again this time in connection with the case of a Dhobi is Scheduled Caste but was born, brought up, and employed in Bombay (where Dhobi is not a scheduled caste). He denied that that his ancestral property, house etc. were in up and he has no property or house in Bombay, but lived there only for the sake of his employment. This case was referred to the law minister who again the read the order so that he was excluded a result that the Commissioner found anomalous in view of the fact that. "Such persons may actually continue to suffer from all disabilities resultant from the practice of untouchbility as they have to maintain all ties with their relations in the home state.[73]

He recommended that migrant Scheduled Castes and Tribes should be eligible for benefits from the Central government . and their home state

at least for a generation.[74] No relief for interstate migrants has been forth coming. In 1965, Lokur committee recommended the removal of interstate area limitations on the ground that they inhabit mobility.[75] The Scheduled caste and Scheduled Tribes order Amendment Bill, 1967, proposed that when a caste is Scheduled for one area of state, the members from that area shall continue to be included so long as they reside any where in that state.[76] The 1976 amendment of the lists did not contain their provision , but the need for it was largely dispelled by the abundant of all most all intra-state area restrictions. The conferring of scheduled status on a ground is a monopoly of the centre. The 1950 scheduled tribes order list for Maharashtra included an item for Halba from six specified Taluks in three districts, in 1967, the government of Maharashtra ordered that the Halba Koshits of the whole of vidarbha region be treated as belonging to the Scheduled Tribes. A Halba railway worker from outside the tested Taluks was directed from a promotion panel on the ground that he was repulsed by the Bombay High court, which held that states pronouncement could have no effect on his status as a Scheduled Tribe in connection with any of the affairs of the central government. The court left open the question whether the state might treat him as a scheduled tribe in regard to state services.[77]

The issue has never been fully addressed. It must be desirable to allow the state to employ its better informed judgment about local conditions .There is of course the danger that state is of this power to dilute benefits to those deemed deserving beneficiaries by national policy. The most prominent instance of this is that Maharashtra's treatment of the Buddhists on a par with Scheduled Castes has not been challenged in the court. Religion was introduced as a qualification into the first Scheduled

Castes order in 1936, which provided that no Indian Christian (nor, in Bengal, those professing Buddhism or a tribal religion) should be deemed a member of a Scheduled Caste.[78] Earlier, it was often recognized that there were comparable depressed groups among Christians and Muslims. But in the dispute leading up to the listing of scheduled castes, it was agreed that Muslims and Christians should be excluded. [79] This exclusions was readily understandable , for the major purpose of the list was to provide for electoral representation, and Christian and Muslims were the beneficiaries of special electoral treatment as minorities.[80]

In spite of the Constitutional ban on religious discrimination, the elimination of separate representation for religious minorities and change in purpose of the list from electoral to administration of welfare, the religious qualifications (or more properly, disqualification) was retained after Independence. The president's 1950 order provides that "No person professing a religion different from Hinduism shall be deemed a member of Scheduled Caste.[81] An exception was made for Sikh members of four Castes. In 1956 it was broadened to include all Sikh untouchables.[82] The religious test for Scheduled Castes is employed, not as a positive test for selecting appropriate groups for inclusion, but as disqualification of individuals and groups who otherwise meet the criteria, thereby inevitable, discouraging conversion. There is a reason to think that this was the least part of its purpose. It does not operate as an encouragement of Hindu orthodoxy, for the legal definition of Hinduism is to broad that few individuals are likely to have difficulty with this lest other then those who explicitly convert to a non-Hindu religion. In the case of *Panjabrao vs. Meshram*, the Supreme

Court rejected the argument that Buddhists were included in the meaning of Hindu.[83] The Court upheld the inclusion of non- Hindus without reaching the broader question of religious discrimination Nor have the Courts addressed the factual question of the effect of conversion in dissipating the conditions that lead to be listed as Scheduled Caste. President legislative attempts to include the Buddhists, either dropping the religious qualification or by specifying that ' Hindu be read to include them' have been unsuccessful- as has a recent attempt to extend the religious qualification to the Scheduled Tribes. In examining the impact of the Courts on the working of the policy of 'compensatory discrimination' the role of the Courts in the process of designating the scheduled castes has been a very minor one. The search for a uniform criterion that could be employed throughout India to distinguish untouchables from other Hindus proceeded without any assistance from the courts. Although Scheduled Castes were selected on the basis of the disabilities they suffered.[84]

Although untouchables could be readily identified with the lower and of the Verna scale, the traditional jurisprudence of Verna standing was of little assistance in identifying the groups which were supportably untouchable. Modern untouchbility" bore little correspondence to the Chandal category of classical law. In reference to determinations of customary rights, courts had some times employed Verna categories. Untouchables had some times particularly in South India, has been referred to as a fifth Verna, below the *Shudras.*[85] But in order to place they were regarded as *Shudra* , albeit ' unclean ones 39for purposes of applying Hindu personal law, the courts had never attempted to distinguish untouchables from Shudra,.[86] Even where untouchables were

popularly regarded as *Shudras*, could not be equated with them, since there were non- untouchables groups belonging to this category . Thus the tests used for distinguishing Shudra from the twice – born could not be used as satisfactory measure of untouchbility.

It might seem that identification of untouchables would proceed from the definition of untouchbility in order to select those who suffer from it The contemporary legal treatment of untouchbility has derived from the testing of these groups (which in turn as chosen with at least one eye to an ill defined notion of untouchbility) The term untouchbility had no technical meaning before the Constitution abolished it. The few judicial encounters with the concept have not succeeded in defining it in a way that would be useful in identifying untouchables . The courts have indicated that untouchbility does not include all instances in which a person is treated as ritually unclean and a source of pollution. It does not include such temporary and expiable states of pollution as those suffered by women at child birth, menstruating women, mourners, persons with contagious diseases, persons who eat forbidden food or violate prescribed states of clean lines. Nor does it include that untouchbility which arises from incidents of personal history. Nor does it refer to situational or relative impurity, such as that between ordinary worshipper and priest or temple attendant. "It does not include every instance in which a person is stigmatized as unclean, polluting, or inferior because of his origin or member ship in a particular group – i.e. Where he is subjected to invidious treatment because of difference in religion or membership of a lower or different caste.[87] The term untouchbility with which Article 17 is concerned is that which refers to those regarded as un- touchable in the course of historical development

and which is related to the caste system on the ground of birth in certain classes.[88]

Thus the word untouchable is confined to disabilities imposed upon the groups commonly regarded as untouchables. Its meaning is determined by reference to those who have traditionally considered untouchables. But it is not always easier to define untouchables than to define untouchbility.. Even the lowest castes are within the traditional system of reciprocal rights and duties. Their disabilities and prerogatives are articulated to those of other castes. Besides this Verna test is not workable because it continues to crop up in discussions of untouchbility. Thus the Courts has not still developed any learning on untouchbility that is suitable and could be employed in the criteria of selection of Scheduled Castes.

The Scheduled Castes are not at the lowest group in the Hindu caste system. Their conditions have not under gone significant change ever after the four decades of political independence. Of course there were several reform movements before independence, and various Constitutional safeguards. Dalit bodies and voluntary agencies which have high lighted the problem of these groups without much fruits. The Constitutional safeguards only helped to create a class among these very sections, they have not yielded any change in respect to others who continue to be exploited deprived and depressed in all aspects of life. The up word mobility of the Scheduled Caste is not always smooth or easy. This is due to the conflicting demands of status and power while larger section of Dalits remain untouched and unchanged, Those little sections which moved up the scale of mobility in spheres other than

caste are increasingly facing many problems of adjustment, strains and counteractions by the rest of the society in various form of threat, coercion , humiliation torture, rape and other kind of violence The Scheduled Castes who were also called *Harijan* constitute an important stratum not because they form 15 percent of India's population but they occupy a unique position as untouchables. The economic position relating to land holdings further high light the differences. While 80.8% of land is owned by other communities The Scheduled Castes posses only 7% of them nearly 7% have less than one hectare. In employment, the quotas of higher posts of them are rarely filled. Most often posts meant for Scheduled Castes are deserved and filled by others for want of suitably qualified candidates. The remarks of the Commissioner of Scheduled Castes and Scheduled Tribes, Constitutionally appointed authority to monitor the working of this safeguards for Scheduled Castes and Scheduled Tribes reported over a decade ago are most appropriate. But still willing smile on many a hamlet and slum of the Scheduled Caste is yet to be bestowed. They continue to submit to the decree of fate rather than have the benefits of the our basic laws, liberty equality and fraternity so richly enshrined in the Constitution of our country have still to require a meaningful preposition for them. There are many areas where Scheduled Castes are denied common soured of drinking water.[89] Today despite of declaration of Article 17 of the constitution which prohibits untouchbility and its practice very little changes has taken place and the conditions of Dalits remains in their previous positions. The condition of the Dalits in the rural area is worst. Untouchbility is still practice there. They continue to live separately from the village. In the public functions, festivals and ceremonies, they

are usually kept at a distance. The untouchables are given a tea in mud cups whereas others are given in tumblers. They are made to sit in corner, away from those of other Castes. The converted *Harijan* Christian's also suffer many humiliations just as their ex- counterpart.

The Constitution of India of course made untouchbility a panel offence. But the law is seldom used.. Beside this, the atrocities on the Scheduled Castes have gone up so sharply and continuously that the government has been forced to enact a new sharp law providing for more stringent punishments and effective implementation of safeguards by penalizing officers who act with indifference. The backward classes from a major portion of the Hindu society. According to Mandal Commission report they form 52% of the total population 43.707 were Hindus and 8. 40% were the non- Hindus. In addition to the backward class population the scheduled castes were 15. 5% and Scheduled Tribes were 7.517% of the total population. Total of these categories would be 22.50% of the total. Thus the backward classes 52.107 plus Scheduled Castes and Scheduled Tribes 22.56% would be 74.667 the total population. The backward classes are nothing but a collection of certain castes which are socially and educationally backward. In the Hindu religious order they are called *Shudra* and treated as lower among the Chatur*Varna*. Dr BR Ambedkar had great sympathy for these backward classes. The Manusmirit has maliciously imposed several in human penalties and indignities on them.[90] Therefore, they remained backward in all respects. His vision of an integrated society based on liberty, equality and fraternity makes him to think for them and to strive to improve their conditions. According to *Shudra* among the Indo- Aryan community and Shudra Castes among the Hindu society come under the blanket nomenclature

of backward classes. Under the constitution of India, the credit of framing of which goes to Dr. Ambedkar, the backward classes are those which are necessarily socially and educationally backward It should be born in mind that he advised the backward classes to " forge a united front " with the scheduled castes' in order to wrest political power from the higher classes.[91] He very categorically said, the Scheduled Castes and backward classes form majority of the population of the country. There is no reason why they should not rule this country. All that is necessary is to organize for purpose of capturing political power which is you own"[92] Dr. Ambedkar very rightly thought that they need only unity of purpose and sufficient courage to strive for power. Thus he proposed political solution to the socio- economic problem of both the classes. He was also aware of the fact that the backward classes did not like to associate themselves with the Scheduled Castes because they were afraid that such an association will bring themselves down to the level of the Scheduled Castes.

REFERENCES

1. K.K. Mathew, The Right to Equality and Property under the Indian Constitution (1980, New Delhi.) p.2
2. Mahajan, V.D., Constitutional law of India (ed. 7th, 1991) P. 104
3. Rupinder Singh Vs. Union of India, (1983) I SCC (cri) 186 AIR 1983 SC.
4. Supra Note 2
5. State of U.P. Vs. Deoman Upadhyay, (1961) ISCR 14, 33 AIR 1960 SC 1125,1133
6. Satish Chandra V. Union of India, AIR 1953 SC 250, 252 1953 SCR 655
7. Jennings, Law of Constitution (5th ed. New Delhi) P.94
8. Chiranjit lal chowdhry Vs. Union of India AIR 1951 SC 41 : 1950 SCR 869
9. State of Kerala Vs. N.M. Thomas (1976) 2 SCC 310
10. Kedar Nath Bajoria V. State of W.B. AIR 1953 SC 404, 406 1954 SCR 30
11. Bidi Supply Co. V. Union of India 1956, 267, 281 AIR 1956 SC 479 486, Nagpur Improvement Trust V. Vithal Rao, (1873) I SCC 500.
12. Ram Krishana Dalmia V, Justice Tendolker, AIR 1958 SC 538: 1959 SCR 279.

13. Ram Chandra Jagdish Chandra Vs. Union of India AIR 1963 SC 563 (1962) 3 SCR.

14. Kedar Nath Vs. State of West Bengal, AIR 1953 SC 404; 1954 SCR 30

15. State of Bombay Vs. F,M Balasara, AIR 1951 SC 318

16. State of Bengal Vs. Anwer Ali AIR 1952 SC 75.

17. AIR 1974 SC 555, Menka Gandhi Vs. Union of India AIR 1978 SC 597 RD Shetty Vs. Airport Authority, AIR 1979 SC 1628.

18. AIR 1978 SC 579 8-RD Shetty Vs. Airport Authority, AIR 1979 SC 1628.

19. AIR 1971 SC 481.

20. AIR 1980 SC 1975.

21. AIR 1981 SC 487.

22. AIR 1981 SC 1829.

23. AIR 1981 SC 138.

24. AIR 1982 SC 1126.

25. AIR 1983 SC 130.

26. AIR 1983 SC 473: (1983). SCC 278

27. (1983) 4SSC 339.

28. (1982) 4SSC 296.

29. (1984) 3SSC 654.

30. (1983) 1SSC 524.

31. AIR 1985 SC 87, Suman Gupta Vs. State of J&K AIR 1983 SC 1235

32. (1985)! SSC 641.

33. AIR 1986 SC 1571.

34. AIR 1988 SC 835.

35. AIR 1988 SC 481.

36. (1988) 4SSC 290.

37. (1988) 2SSC 602

38. AIR (1989) SC 139

39. AIR (1989) SC 903

40. AIR 2989 SC 2038

41. AIR 2990 SC 40

42. (1990) 1SSC 663

43. AIR 1990 SC 1212

44. (1990) 3SCC 40

45. AIR 1991 SC 101

46. (1989) 1SCC 212

47. Supra Note 43

48. The Hindustan Times Feb. 4, 1993, p. 7

49. AIR 1982 SC 379. Nakara Vs. Union of India, AIR 1983 SC 130

50. (1986) 4SCC 707

51. (1988) 1SCC 122

52. AIR 1989 SC 1256 Harbans Lal Vs. State of H.P. (1989) SC 459.

53. Article 341(2)

54. Article 342(2)

55. Constitution Scheduled Castes order, 1950, p.6

56. Constitution Scheduled Castes order 1951, p.8

57. The Scheduled Castes and Scheduled Tribes order (Amendment) Act 1956, (Act 63 to 1950) p. 12.

58. Supra Note 56 at pp. 10-11

59. Ibid

60. Ibid

61. Devarah Jiah Vs. Padmanna, AIR 1958 Mys. Pp. 84, 85

62. Ibid

63. Ibid

64. Sri Santosh Kumar, RSD Vol, 97, N. 18. (ed 35, 3rd September 1976) at p. 35

65. Ibid

66. Ibid

67. Ibid

68. Chandidas, the scheduled castes (1968, New Delhi) at pp 553-

643.

69. Scheduled Castes and Scheduled Tribes (Amendment) Act, 1976 (Act 108 of 1976) p.6

70. Bhoiya Lal Vs. Hari Krishan Singh, AIR 1956 SC, 1557, 1560.

71. Public employment (Requirement as to residence) Act, 1957 (Act 44 of 1957)

72. K. Appa Rao Vs. Director of posts and Telegraph, AIR 1969 at p. 221.

73. Ibid

74. Ibid.

75. Ibid

76. Jyoti Bhushan Vs.Bodhram Muritram, 1974, MPLJ, 565.

77. Vasudeo Vs. Union of India, 1973 Mh-LJ p. 994

78. Lalwani Vs. Collector, AIR 1976, MP pp.44- 45.

79. Ibid.

80. Ibid

81. Ibid.

82. Ibid

83. Lok Sabha Bill No119 of 1967 at p. 7

84. Vasudeo Vs. Union of India, 1973 MHlJ994.

85. The govt. of India (Scheduled castes) order, 1936 p. 53.

86. Thus Hutton's note to the Indian franchise committee observes that it was decided to omit Christians and Muslims Indian franchise committee 1932, 1, 111.

87. For the composition of the legislative bodies under the government of India Act, 1935,

88. Supra Note 55

89. Supra Note 57

90. AIR. 1956 SC 1179.

91. Sankaralinga Nadan Vs. Raja Rajeshwari Dorai, 35 11AC. 176

92. Atmaram Vs. King Employer, AIR 1924 Nag. 121.

Chapter IV

EQUALITY WITH REFENCE TO BACKWARD CLASSES

EQUALITY WITH REFERENCE TO BACKWARD CLASSES

The concept of equality envisages the idea that all men are born free and equal, and there should be no discrimination on the basis of religion race, caste, sex, color or creed. Hon'ble Justice Mathew emphasized that the claim of equality in fact a protest against unjust, undeserved and unjustified inequalities. It is symbol of man's revolt against disparity, unjust power and crystallized privileges. Equality is one of the Human Rights, which was declared in order to maintain humanism in our society. The Human rights are basic sociopolitical conditions to which every human being is entitled. The equality among men means that every citizens physical strong or weak, effective or non- effective rich or poor, is entitled to equal opportunities along with all other members of the society. In a broader perspective equality as a principle of distributive justice amounts to no more than that men amounts to no more than that man should all be treated in the same way save where there is a sufficient reason to treat them diffirently.[1].The concept of equality is based on the principle of natural justice that all individuals should be treated alike. In the context of social sciences, the concept of equality refers some time to certain properties when men are held to have in common but more often to certain treatments which men either receive or ought to receive.[2]

The framers of the Constitution also made it clear that there could be no other fundamental rights of the individual than those guaranteed by the

Constitution of part III. Contrary to this, the Ninth Amendment of the Constitution of united states provides that the enumeration of certain rights in the Constitution shall not be construed to deny or disparage others retained by the people'. In the absence of such a provision in the Constitution of India, it is logical to sum up that there is no scope for the courts in India to formulate any more fundamental rights by the application of the doctrines of implied and inherit rights of the individual. The provisions of the Indian Constitution relating to right to equality which prohibits all kinds of unjustified inequalities.

The value of equality demands the giving of favored treatment to the deprived and the weaker sections of the society, to enable them to complete with fairness with advanced members of the society. The equality in fact involves an equilibrium creating or equilibrium oriented compensatory discrimination. It takes into account social, economic and educational inequalities by affirmative actions.[3]

Equality helps in promoting brotherhood among human beings and it protects status and dignity of all men. It is the foundation of socialistic democracy based on secularism. It requires the state to take action: legislative, judicial or administrative to provide protection to weaker sections of the society. Equality as an aspect of justice has two phases namely, equality as a means of doing justice and equality as an end of justice. One may accept the notion of equality, social, economic and political as an end of justice. However, it is not practicable to accept the notion of equality without 'protective discrimination'. There are various synonyms used for protective discrimination in legal literature. They are "reservation", "quotas" "compensatory treatment" or "preferential

treatment" and "adventitious aids" etc. Protective discrimination is a means of doing justice. The road to distributive justice is a two lane highway one– requiring the equal treatment of the equals and the other requiring the unequal treatment of unequals.[4]In order to discover substantive of distributive justice, it is necessary to establish a body of rights and duties and then to examine them in the light of the formal principle of equality. The aim being to exclude every form of individuals, discrimination is not justified by relevant authorities/ agencies. The doctrine of equality envisages the idea of protective discrimination in all its manifestations.

The notion of protective discrimination aims at unequal treatment of un equals i.e. those who were the victim of the man made asperities for centuries together now need to be compensated. Mere proclamation of abstract equality will be of no use to such persons groaning under the abject poverty and deadening weight age of backwardness. They need protective discrimination or 'adventurous aids' to participate in the mainstream of national life, the way, the Constitution, Vouchsafes and ordains for them. It is the legitimate aspiration of citizens in a welfare state that good education and security of job should be provided to all of them. If no protective discrimination is given to the weaker sections in the matters of educations and employment they will remain as they were and our professions of distributive justice will be a dream and a teeming illusion to be vainly pursued in an organizing atmosphere of inequality ridden society.

Equality naturally gets priority under the Constitution of India in its preamble as well as which deals with the fundamental Rights of the

citizens. The most important reason for laying emphasis on this right was due to the prevalence of discrimination on ground of religion, race, or place of birth in large scale during British rule. The fundamental rights guaranteed under the Indian Constitution are not based on the theory of natural rights and reasonable restrictions have been imposed on the exercise of different rights in the interests of community. Pandit Jawahar Lal Nehru in this connection rightly observed "individual can over side ultimately the rights of the community which injure and invade the rights of the individuals unless it is to be for the most urgent and important reasons[5].

Moreover it can not be claimed that framers of the Indian Constitution draft, a wholly indigenous or a novel Constitution to achieve this objective of rightly balancing the interest of the individuals with those of the community. Dr. Ambedkar was quite correct when he observed that there could be nothing new in a Constitution framed so late in the history of the world According to him in a Constitution framed so late the days are more apparent than in the formulation of the fundamental rights and specially in setting forth systematically the rights relating to equality. The Indian society has been traditionally pluralistic and its culture has been defined by a rich variety of diversities.

The question of formulating a set of fundamental rights guaranteed right to equality in such a social context, harmonizing the rights of the individual with those of community, could not be free from controversy or confusion. According to Sardar Ballabh Bhai Patel, the chairman of the advisory committee, "these two schools viewed the matter from two different angels, one school of thought considered it advisable includes

as many rights enforced. The other school of thought considered advisable to restrict fundamental rights to a few essential things that may be considered fundamental. Between the two schools there was a considered to be a very good means.[6]

The concept of equality is, in fact, an indication of the fact that all men are ultimately equal. It is therefore, a noble ideal which provides dignity to all individuals. Nonetheless, the concept does not necessary denote that every one should be treated alike regardless of individual abilities and absolute equality is, in fact, an impossibility and what equality really signifies is that among equal laws should be equal and equally administered also. It further denotes that every one who is classified as belonging to the same category, for a particular destination is to be dealt with in the same manner. The concept of equality is closely attached with the concept of justice. This is what the Supreme Court and the High courts of India emphasize through their various judgments. In the Constitution of India, right to equality is provided under Article 14, 15, 16, 17 and 18. Article 14 lays down the general rule which prohibits the state from denying any person equality before law or the equal protection of the laws. While succeeding Articles 15,16,1 and 18 provide particular applications of the rule. In the Constituent Assembly, provisions relating to right to equality were examined in considerable details. The Advisory Committee on fundamental Rights dealt only with the equal treatment of laws but added the 'due process' clause regarding the right to life and liberty.[7] The Drafting Committee submitted the term equality before law for equal treatment of law and added a new phase, viz, 'equal protection of the laws'.[8] Originally in the draft Constitution' the right to personal liberty were combined together in one Article. But

after the second reading stage, decision was taken by the Constituent Assembly to provide equality before in a separate Article. The Constitution advocates for the abolition of social disabilities. According to the Advisory Committee, the state is not to discriminate against any citizen on the grounds only of religion, race, caste or sex with regard to trading establishments, or the use of wells, tanks road places of public resort which were maintained partially or wholly by public funds.[9]

The Drafting Committee accepted these non- discriminatory provisions and added the words or any of them to clear any doubtful or double meaning.[10] Mr. Rout placed an amendment to add 'place of birth' in the non-discriminatory provisions which was also accepted by the committee. Some of the members opposed detailed provisions for abolition of social disabilities which according to them could be removed sooner or later by social reforms. Prof. Saxena, considered it essential to prepare the ground to give effect to these changes by the Constitution by name.[12] However, majority of the members were in support of embodying these provisions in the Constitution. Somnath Lahiri pointed out that there should be no discrimination either on social grounds of political beliefs and faiths. Hence, he thought an amendment wanted to add the words 'political creeds' under the clause (4) of the interim report on fundamental rights which was not accepted.

The Advisory Committee accepted for equality of opportunity for all citizens in matter of public employment on grounds only of religion, race, caste, sex, descent, and place of birth or any of them except in the case of any section of society which was not adequately represented in the services. The state was authorized to legislate suitably to safeguard

the interests of such section of society. The Draft Committee passed these provisions and added the word 'backward' to signify that class of people which was not adequately represented in the public services.[11]

Some members were of the opinion that the term 'backward' could not be defined in brief and this might create confusion.[12] Aziz Ahmad Khan wanted to drop the word 'backward' altogether but Dharam Prakash was in favour of replacing the term 'backward classes' by 'depressed classes' or Scheduled Castes to make it more clear.[13] On the other hand, Pt. H.N. Kunzru opposed to the principle of reservation of seats for backward classes in matter of public empowerment which according to him would lead to social disharmony.[14] He, however, suggested for a time limit for such reservation subject to further extension of the Parliament considered it desirable . Dr. Ambedkar while rejecting this proposal observed that it was a compromise formula of the three divergent views expressed by the members and the public at large in this connection. These were equality of opportunity for all, no reservation of any kind for any section of the community and due representation to backward communities in administration. He therefore, claimed that under such circumstances no better formula could in clause 3 of Article 10 of the Draft Constitution.[15]

Although Advisory Committee had not prescribed residential qualification for public employment, the matter was raised in the Constituent Assembly. A.K. Ayyer wanted to insert a new clause which could empower Parliament to enact a law, if essential for any state condition of combined citizenship by itself is not a justifiable right to limit a certain class of employment for the residents of that state.[16] T.T

Krishnamachari, however considered this suggestion as unnecessary.[17] Dr. B.R.Ambedkar too did not like this idea. He observed: "the argument that resident should not be qualification to hold appointments under state is perfectly valid and a perfectly sound argument.[18] Some members objected to the inclusion of the provision of abolition of untouchbility in dealing fundamental rights. According to them it was a social evil and could not be removed through constitutional provision unless the caste system it was abolished.[19] Dr. S.C.Banerjee observed that "Untouchbility was not a disease, namely caste system".[20] Moreover, there could be no appropriate definition of untouchbility and according to D.N.Dutta "Unless there is a definition it can not considered as an offence".[21] Members like R.K.Choudhary and Naziruddin Ahmad vainly tried to define untouchbility but their definition could not be accepted by the house.[22] Finally the provision for the abolition of untouchbility was carried through by the unanimous vote of the constituent Assembly. Likewise, titles were also abolished under 7 of the interim report on fundamental rights which provided that the Union Government was not to confer any heritable title, nor was any person, "holding any office of profit or trust" under the state to have any title from any alien state without the permission of the Government. However, the draft constitution the qualifying word 'heritable' was dropped[23] and a saving clause not being a military or academic distinction was added at the second reading stage.[24] Meanwhile, Balakrishna Sharma opposed abolition of titles on ground of social tradition of the country and Psychology of the people.[25] Another members Mr. Prakash wanted distinction to be made between titles award by the state as by the state should be abolished.[26] Furthermore,

H.V.Kamath enquired from Dr. B.R Ambedkar whether the abolition of titles was a justifiable rights.[27] The latter replied in the negative and observed that infact it was not a right but a duty upon an individual and a condition of combined citizenship by itself is not a justifiable right.[28]

However, the pursuit for equality and distributive justice has often led to conflicts between the guaranteed individual rights and social justice to people belonging to backward classes and weaker section of the society while the guaranteed fundamental rights are enforceable. The claim to social justice by the members of the backward classes and weaker sections is not enforceable as such, unless the state passes a law in that direction. Since, the Constitution authorizes the state to make preferences for them. While the state to action in implementing the preferential schemes have to be encouraged, it has also be seen that in the exercise of the powers the government does not abuse or misuse its power, so as to impair the interest of others. The government has to perform a formidable task of balancing the completing claims of different sections of the society. The harmonization is required to resolve this conflict between "need basic claims" of the backward groups to protective discrimination and the rights of the members of the advanced sections to which they became entitled because of their performances contribution and merit. The court also performed a tremendous task in ensuring that the protective discrimination is confined strictly to constitutionally permissible objectives and of over seeing that a balance is struck between the fundamental rights of the individual and social justice to the backward classes. The concept of equality envisages the idea that all men are born free and equal, and that

there should be no discrimination on the basis of religion, race, sex, caste, color or creed.

It is a *Sin quo non* for the effective exercise of rights guaranteed in the constitution. "The more equal are the social rights of the citizens" says, Laski, "the more likely they are to be able to utilize their freedom in realms worthy of exploration. Certainly the history of the abolition of special privileges has been, also the history of the expansion of what in our heritage was open to the common man. The more equality there is in a state the more use, in general, we can make our freedom.[29]

The word equality is incapable of single definition as in its ambit it is multi-dimensional. It is a comprehensive concept having may shades and connotations and it has no one common attributive. Attempts to identify such attributes are likely to lead to for ranging decision-discussions of the relations between equality and liberty[30], and these are mainly the problems of distributive justice. The term equality is indefinable since it can only be realized and understood in contra distinction with inequality. It would be correct and reasonable to say that men ought to be treated inequality, because they are of unequal rank, circumstances, ability and race. Equality can only be achieved when we have a social order which is based on the identity of interests, roles, power and authority in different sectors of human life.[31] According to Friedman: It is clear, however, that the principle of absolute equality between individuals of all cases and races can not be understood in a rigid sense, it means the abolition not of natural differences, which is not with in men's power to abolish, but of man made differences inherited

in the organization of the society. It is the task of law in democratic societies to remove.[32]

The principle of formal equality proclaims that each man to count for more than once, but men are not equal in all respect. The claims for equality is in a fact protect against unjust, and undeserved and unjustified inequalities. It is a man's revolt against chance, fortuitous, disparity, unjust power and crystallized privileges.[33] The equality in physical sense to achieve physical equality, we often have to resort to the principle of proportion equality which speaks for the treatment of equals equally and un equals and un equality proportional equality which speaks for the treatment of equals equally and un equals unequally. Proportional equality demands that all would receive the same consideration in the distributional decisions, but the numerical amounts distributed may differ proportional equality thus mean equality in the distribution according to the merit or need. In the word of Mathew: 'it does not imply that men are identical or equal in intelligence, strength, talent or many other respects. As a normal principle, its meaning might be summed up in this way: human beings are entitled to be treated as they are equal on all matters important to them and matters really important to them are matters that are common to men.[34]

Rashdall was of the opinion that the principle does not require that every person be given an equal share of wealth or of political power, but rather equal consideration in the distribution of ultimate good.[35] The equality of men means that every citizen of whatever capacity, is entitled to equal consideration from all members of society. Physically strong or

weak, effective or non- effective, rich or poor, he is to be regarded as such opportunities of self–development as he is capable of grouping or even share protection or sustenance of which he is incapable through natural defects or undeserved misfortunes, of maintaining any foothold for himself in society.

In a broader perspective, equality as a principle of distributive justice amounts to no more than that men should all be treated in the same way save where there is a sufficient reason to treat them differently. But this version of equality seems to leave open what is to count as a sufficient reason and all kind of distinction could make entry that way. However, belief in this aspect of equality viz, one man should not be referred to another without sufficient reason, is a deep rooted principle of human thought like other ends. It can not itself be defended or justified other-acts.[36] Plato's remarks about law is equally applicable to the concept of equality that a perfectly simple principle can never be applied to state of things which is the reverse of the simple.[37] Aristotle observed that the origin of all quarrels and complaints can be traced to the fact that the doctrine of proportional equality has been violated, as when equals have been or are awarded unequal shares, or unequal equal shares. He maintained that award should be made according to merit, but, there is no consensus as to what constitute merit. The differential treatment would be unjustified, if the persons concerned are not distinguishable because in such cases the equals would be treated unequally which will be tantamount to the principle of proportional equality.

The doctrine of differential treatment has been expounded by Rousseau that "it is precisely because the force of circumstances tends to maintain

it".[38] John Rawls in his book: "A theory of justice" demands the priority or equality in a distributive sense and setting up of social system so that no one gains or loses from his arbitrary place in the society without giving or receiving compensatory return. His basic principle of justice is "all social primary goods- liberty and opportunity, income and wealth, and the basis of self- respect are to be distributed equally unless an unequal distribution of any or all of these goods are to the advantage of least favored". One of the essential elements of Rawl's conception of justice is what he calls the principle of redress. This is the principle that undeserved unequal call for redress, and since inequalities are somehow to be compensated for society must, therefore, treat more favorably those with fewer native assets and those borne into less favorably social positions. Thus, the Rawl's Theory of justice and redress principle furnish an answer to the problem that equality of opportunity must yield equality of Results[39]. In a society, the individuals possess certain needs, in common, thus they are to be treated equally until and unless those needs are minimally met. In this context, Laski maintains: Equality therefore involves up to the margin of sufficiently identity of response to primary needs, and that is what is meant by justice we are rendering to each man his own by giving him what enables him to be man we are, of course therein, protecting the weak and limiting the power of the strong. We so act because the common welfare includes the welfare of the weak as well as of strong. This involves a payment by society to men and women who limp after its vanguard, the equality of state depends on its regarding their lives worth preserving. To act otherwise is to regard them not as person but as instrument. The value of equality demands the giving of favoured treatment to the deprived and the weaker sections of

the society, to enable to compete with fairness with the well to do and more advanced members of the society. Thus, the measures which are designed to promote and effective equality by giving preferential treatment to the unequals and to different from the distributive justice. The equality in fact, therefore, involves an equilibrium creating or equilibrium oriented compensatory discrimination.

The compensatory discrimination notion takes into account social, economic and educational inequalities and seeks the elimination of the existing en equalities by affirmative actions. This policy is justified because unequal characters of human beings are not as results of innate superiority, but of unequal environment are removed or eliminated and there will be a greater chance to attain a stage of real and effective equality.[40] the call of the moral perspective of equality value is: equals must be treated equally. Un equals must be treated unequally not to perpetuate the existing inequalities but to achieve and maintain a real state of effective equality. The Indian society is a caste- ridden and economically imbalanced society.

The strictness of caste barriers from centuries together has led to the social isolation and economic oppression of a section of society. The doctrine of social equality would be meaningful in the Indian society only if protective discrimination' or initial advantage or privilege is given as an equalizer to those who are weak: socially, economically and educationally to avail the advantage of guaranteed freedoms on the footing of equality. It demands equality in fact, which alone can be the basis for social equality. The Indian Constitution makers did provide both doctrines to impart distributive justice to its citizens.[41]

A similar opinion has been expressed by Mr. Justice Subba Rao. According to him, the concept of equality in practice can only be worked out by accepting two principles (i) to give equal opportunity to every citizen of India to develop his own personality in the way he seeks to do, and (ii) to give adventitious aids to the under privileged to face boldly the competition of life. Though these two principles appear to be conflicting but the harmonious blending of both give equal opportunities to all citizens to work out their way to life. Doctrinaire insistence of an abstract equality of opportunity leads in practice to inequality which the doctrine seeks to abolish.[42] The Indian society is traditionally caste ridden and caste oriented. It thrives on numerous factors grounded essentially inequality. Therefore, equality in fact, can be realized by treating on the one hand, the forward classes and the under privileged classes differently. In other words, it is a device of protective discrimination or 'adventitious aid' in the favor of the latter which alone can equate them with the former. On the other hand, it requires the removal of all social evil or factors perpetrating social inequality of distributive justice are a living reality. Principles of equality under Article 14 of the Constitution provide that the state shall not deny to any person equality before the law or equal protection of laws within the territory of India. The spirit behind this Article is undoubtedly to secure to all persons, citizens or non- citizens, the equality of status and of opportunity referred to in the glorious preamble of the Constitution. Equality before law is negative concept which ensures that there is no special privilege in favour of any one, that all are equal subject to the ordinary law of land and that one person, whatever, be his rank or condition is above the law. The concept equal protection of laws is

positive concept. It postulate for the application of the same law alike and without discrimination to all person similarly situated.[43]

It denotes equality of treatment in equal circumstances. It implies that among equals the law should be equal and equally administered that the like should be alike without distinction of race, religion, wealth, social status or political influence. All persons are not equal by nature, attainment or circumstances. The varying needs of different classes or sections of people require differential and separate treatment. The state is required to deal with diverse problem arising out of an infinite variety of human relations. It must therefore have the power of making laws to attain particular ends or objects and for that purpose of distinguishing selecting and classifying persons and things upon which laws are to operate.[44] The state can make reasonable classification in making legislation. The doctrine of classification is only a subsidiary rule evolved by the court to give a political content to the guarantee under Article 14, by accommodating it with the political needs of the society.[45] The classification should rest on real and substantial criteria and should be supported by an intelligible object intended to be pursued by the legislature. The legislature should neither treat unequal as equals, nor equals as unequals without any rhyme or reason or intelligible purposive differences relatable to the legislative purpose spelled out by it. The doctrine of classification should not be allowed to set up the doctrine of equality. Neither the courts nor the legislature should make effort to discover, somehow and somewhere the basis for classification just to get the enactment declared as constitutional. The protection of equal laws should not be allowed to be replaced by the protection of law making reasonable classification, otherwise, the guarantee of equality may be

replaced by over worked methodology of classification. The Supreme Court has laid down the following principles which should be kept in mind by the judges while deciding the constitutional validity of laws with reference to Article 14 of the Constitution. That the law may be constitutional even though it relates to a single individual or institution. If circumstances or reasons applicable to him only.[46] That there is always a presumption in favour of the constitutionality of the enactment. That it must be presumed that the legislature understands and correctly appreciates the need of its own people and that its discriminations are based on adequate grounds, and that while good faith and knowledge of the existing conditions on the part of the legislature are to be presumed. It can not be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.[47]

These very principles have constantly been followed by the Supreme Court whenever it is called upon to adjudge. The constitutionality of any particular law as discriminatory and violation of Article 14 of the Constitution. The rule of equality within Article 14 and 16(1) will not be violated by a rule which will ensure equality of representation in the services for unrepresented classes after satisfying the basic needs of efficiency of administration. Article 16(2) rules out some basis of classification including race, caste, decent, place of birth etc. Article 16(4) explains that classification on the basis of backwardness does not fall within Article 16(2) and is legitimate for the purpose of Article 16(1). If preference shall be given to a particular under represented community other than a backward class or community other than a backward class or under represented state in an all India service such a

rule will contravene Article 16(2). A similar rule giving preference to an under represented backward community is valid and our Constitution aims its protection by Article 14, 16(1) and (2). Our Constitution aims at equality of status and opportunity for all citizens including those who are socially, economically and educationally backward. The claims of members of backward classes require adequate representation in legislative and executive bodies. If members of the Scheduled Castes and Scheduled Tribes, who are said by the court to be backward classes, can maintain minimum necessary requirement of administration efficiency. Article 15(4) and Article 16(4) bring out the position of backward classes to merit equality for the advancement of backward classes and reservation of appointments and post for them to secure adequate representation. The basic concept of equality is equality of opportunity for appointment. Preferential treatment for members of backward classes with due regard to administrative efficiency alone cum- mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14. Equality of opportunity admits discrimination without reason and prohibits discrimination without reason. Discrimination with reason means rational classification for different treatment having nexus to the constitutionally permissible object. Preferential representation for the backward classes in services with due regard to administrative efficiency is permissible object and backward classes are rational classification recognized by our Constitution. In A Peerlaker Appan vs. State of Tamilnadu,[48] reservation of 41% of the seats in medical colleges in the state of Tamil Nadu for students coming from socially and educationally backward classes was upheld. Hegde, J. observed: There

is no basis for the contention that the reservation made for backward classes are to help to march forward and take their place in line with the advanced section of the people. That is why in Balaji's case (AIR 1963 SC 649), this court held that the total of reservation for backward classes and including Scheduled Castes and Scheduled tribes should not ordinary exceed 50% of the available seats.

Article 16(4) empowers the State to make special provision for the reservation of appointments of posts in favour of any backward ward classes of citizens which in the opinion of the state are not adequately represented in the services under the state. Thus, Article 16(4) applies only if two conditions are satisfied: (i) the class of citizen is backward i.e. socially and educationally, and (ii) the said class is not adequately represented in the service of the state.

The expression backward classes in Article 16(4) has been used in the same sense as in Article 15(4). The Supreme Court has considered the meaning and scope of the expression in a number of decisions. From these pronouncements the following propositions emerge:

(1) Article 15(4) and 16(4) speak of classes only and, do not speak of caste.

(2) Caste by itself can not be determining factor of backwardness, though it may be one amongst several factors. So that reservation can be made in favour of "backward classes" different expressions.

(3) The backward classes in the matter of backwardness are comparable to the Scheduled castes scheduled Tribes.

(4) The backwardness must be both social and educational and not either social or educational.

(5) Social Backwardness in ultimate analysis is the result of poverty. But poverty by itself is not the determining factor of social Backwardness. Poverty is relevant in the context of social Backwardness.

(6) Reservation should not be excessive.

(7) Reservation can not be made at the cost of efficiency in administration.

The scope and extent of Article 16(4) has been examined thoroughly by the Supreme Court in the historic case of Indira Swahney vs. Union of India, popularly known as the Mandal case.[49]

The Union government headed by Prime Minister Sri V.P Singh issued the office memoranda (Called O.M.) on August 13, 1990 reserving 17% seat for backward classes in government services of the Mandal Commission. A writ petition on behalf of the Supreme Court Bar Association was filled challenging the validity of the office memoranda and for staying its operation. In her petition, Ms Indira Sawhney, submitted that the Mandal Commission Report and the office memorandum of 13, 1990 and September 25, 1991, were unconstitutional, illegal and void for the following reasons.[50]

(a) The identification of backward classes and the reservation of jobs in services under the state have been made by executive order.

(b) The identification has been based on indicator which themselves constitute irrelevant criteria and the weight age given are arbitrary and unreasonable and do not disclose classification which bears a reasonable nexus to the object of the classification and is thus violating Article 14.

(c) M.C.R. is based on conjectures and surmises because report of the Technical Advisory committee or of the Panel of the experts has not been perused duly. The petition further submitted that the identification of 3,743 castes apart from being unconditional as being based on caste, is further erroneous on the face of it since the anthropological survey of India has given figures of 1,130 as caste which could not be traced. The result therefore, follows that the other remaining castes are non- existent either on the ground of not being traceable or on the ground of being synonymous, sub group etc.

(d) The five judges Bench of the Court stayed the operation of the O.M. till the final disposal of the case on October, 1990. Again the Union government headed by Sri P.V. Narsimha issued other office memoranda on September 25, 1991 but made two changes in the O.M. of earlier order issued on August 13, 1990.

(e) Added the economic criterion in giving reservation to the poor sections of socially and educationally Backward classes in the 27% quota, and

(f) Reserved another 10% of vacancies for other economically backward sections of the higher castes.

The Five Judges Bench referred the matter to a special Constitution Bench of 9 Judges in view of the importance of the matter to finally settle the legal position relating to reservations as in several earlier judgments. The Supreme Court has not spoken in the same voice on this issue. Despite several adjournments, the Union government failed to submit the economic criteria as mentioned in official memoranda of September 25, 1991. The 9 Judges of Constitution Bench of the Supreme Court by 6-3 majority (Justice B.P. Jeevan Reddy, C.J. M.H Kania, Venkatachaliah, A.M. Ahmadi with S.R. Pandian and S.B Sawant concerning by separate judgments held that the decision of the Union government to reserve 27% government jobs for Backward Classes provided socially advanced persons, creamy layer among them- are eliminated, is constitutionally valid. The reservation of seats shall only confined to initial appointments and not to promotions and the total reservation shall not exceed 50%. The Court accordingly partially held the two impugned notification (O.M.) dated August 13, 1990 and September 25, 1991 as valid and enforceable but subject to the conditions indicated in the decision that socially advanced person – Creamy layer among Backward classes are excluded. However, the court struck down the O.M of P.V.Narsimha Rao's government jobs for educationally backward classes among higher classes. The majority also held that the reservation should not exceed 50% shall be the rule but it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and people. In such situation, some relaxation of this rule may be necessary.

In view of this, the majority did not express any opinion on the correctness of adequacy of the Mandal Report. The dissenting judgment

was given by Justice T.K Thommon, Kuldeep Singh and R.M. Sahai. The minority struck down the two OMs issued by the Union government as unconstitutional and recommended for the appointment of another Commission for identifying the socially and educationally backward classes of citizens.[51]

Dr. Thommen said that whatever and wherever poverty and Backwardness are identified it is the constitutional responsibility of the state to initiate economic and other measures to ameliorate the condition of the people residing in those regions. He said that poverty which is the ultimate result of inequalities and which is the immediate cause and effect of backwardness has to be eradicated not merely by reservation, but by free medical aid, free elementary education, scholarships for higher education and other financial support, free housing, self employment and settlement schemes, effective implementation of land reform and strict and impartial operation of the law enforcing machinery.

The basic structure of the Constitution envisages a cohesive, unified, casteless society- in which Castism petrified and ossified for centuries, should become merely the dust on the shelf of Indian History.. The decision would revitalize cateism, cleave the nation into two forward and backward – and open up a new vista for conflicts and fissifarous forces, and make backwardness a vested interest. It will undo whatever has been achieved since independence towards creating a unified integrated nation.[52] According to him, future historians of the Indian republic will regard 1992 as one of the saddest year in the history of our jurisprudence. This is the year in which the Supreme Court, by a

majority, ensured a fresh lease of life to the cancer of casteism for a long and indefinite future. Over the last thousand years, the greatest curse which had reflected the Indian nation had been the curse of casteism, as justice Kuldeep Singh has pointed out in his minority judgment, historians are agreed that the reason why foreign invaders- the Afghans, the Turks, the Mughals- succeeded in subjugating the country was because casteism divided Indian society and assigned military duties to the particular caste only.[53]

He stated that the majority judgment will revive cateism which the Constitution emphatically intended to end, and the pre- independence tragedy would be re-enacted with the roles reserve the erstwhile under privileged would now become the privileged. The majority view will result in the substandard replacing the standard and the reins of power passing from metricracy to mediocrity. Caste will be given precedence over merit and caliber. Article 16(4) has been virtually re- written by substituting caste by class. When you have removed the creamy layer, what are left with are still the members of certain caste only. The sections of society which fall outside those designated castes do not qualify for reservations, however society and educationally backward they may be.

It is disputed that 46 years of independence have changed the social, educational and economic landscape beyond recognition. There are crores of backward individuals in forward caste and cores forward individuals in backward castes. By making caste the essential condition the majority judgment has included for reservation all members of backward castes who do not belong to the creamy layer.

Excluded members of forward castes however backward and deserving, such a classification patently discriminates against those who do not belong to these castes which are tested as backward. A backward class may be given the benefit of Article 15(4) or Article 16(4), but the class must consist of a homogenous group- the element of homogeneity should be backwardness characterizing the class. In other words, the link or thread holding the class together should be the backwardness of the members. Such a link or thread can never be supplied by caste. Excluding the creamy layer of the caste would not get rid of the vice that the only link, or the thread binding the benefited class together in caste. In other words, a classification may be justified on the ground that it is backward class but never on the ground that it is a backward caste. This principle was precisely enunciated by the Constitution Bench in Triloki Nath.[54] Pradeep Tandan[55] Jayshree[56] and Akhil Bhartiya Sahit.[57]These judgments were cited before the Supreme Court and referred to in the majority judgment without disapproval, but they are inexplicably overlooked.

The majority judgment did not to consider the reasons why for all the past decades, the union government had not made reservation in admissions and promotions. The practice of mentioning the caste in service record was discontinued by the government of India. The last census records to proceed on caste basis are those of 1931, which though hopelessly absolute, were relied upon the Mandal Commission because they were the latest census records to proceed on the caste basis. Gujarat had become the first state in the country to formally accept the Supreme Court verdict on Mandal Commission

Recommendations, providing for reservations in government jobs for other backward communities (OBCs).

The then Chief Minister of Utter Pradesh, Mr. Mulayam Singh Yadav was presented results of Science and Math teachers selected for 497 posts by Chairman of the U.P. subordinate services selection commission. Mr. Ram Krishan at the secretariat annexed. "The list contains result of 304 selected candidates belonging to backward classes. It may be recalled that this as the first result of the Subordinate Services Selection Commission after the implementation of the Mandal Commission Report in the State.[58] The then Bihar chief Minister, Mr. Laloo Prasad Yadav, announced 50 % reservation for the backward communities in the judicial services to ensure justice for the oppressed and downtrodden of the society. The backward people would also be given reservation in the medical and engineering institutions in other to improve their social status.

Criticizing the "creamy layer" concept in the reservation policy, Mr. Yadav alleged that it was conspiracy to between the backwards. The Chief Minister demanded reservation for the backwards in the Assembly and Parliamentary constituencies on the basis of their populations, on the lines of the scheduled castes and scheduled Tribes reservations.[59] The then left front government in West Bengal which had formed Commission to identify other backward classes (OBCs) only after Supreme Court directive finally accepted the caste reality by announcing five percent reservation of government jobs for the OBCs.

In *M.R. Balaji V. State of Mysore*, [60] the first argument by Mr. Iyanger on behalf of the petitioner was that it was not that competent to the state

to make an order under Article 15 (4) . Unless a Commission has been appointed under Article 340 (1) and a copy of the report of the said Commission was laid before the House of Parliament under Article 340 (3) . The argument is that Art. 340 provide for the appointment of the commission to investigate the conditions backward classes. The Commission so appointed is required to make a report recommending what steps should be taken to improve the condition of backward classes Art. 340(2) .When the report is received by the President, the President is required to cause a copy of the report together with the memorandum explaining the action taken thereon to be laid before each House of Parliament Article 340 (3). It is the President who is to take section on the Report and then lay it before the House of Parliament and is only the President who can, therefore, make special provision for the advancement of the backward classes. That is the effect of reading Articles 340 and 15(4) together. The Supreme Court has held that this contention was misconceived. It is true that the Constitution contemplated the appointment of a Commission whose report and recommendations, it was thought, would be of assistance to the authorities concerned to take adequate steps for the advancement of backward classes .but it would be erroneous to assume that the appointment of the commission and the subsequent steps that were to follow it constituted a condition precedent to any action being taken under Art. 15 (4). Besides, it would be noticed that Art. 340 (1) provides that recommendation had to be made by the Commission as to the steps that should be taken by the Union or any state, inter- alia, to improve the condition of backward classes, and that means that the recommendation were to be made which would be implemented in their discretion by the

Union and the state governments and not by the President. Thus, Article 340(1) itself shows that it is the Union or the state that has to take action in pursuance of the recommendation made, and so, the argument that the President alone has to act in this matter can not be accepted.

The Rule of equality within Article 14 and 16(1) will not be violated by a rule which will ensure equality of representation in services for unrepresented class after satisfying the basic needs of efficiency of administration. Article 16(2) rules out some basis of classification including race, caste, descent place of birth, etc. Article 16(4) clarifies and explaining that classification on the basis of backwardness does not fall with in Article 16(2) and is legitimate for the purpose of Art. 16 (1). If preference shall be given to a particular under- represented community other than a backward class or under – represented state in an All India service such a rule will contravene Article 16(2). A similar rule giving preference to an under- represented backward community id valid and will not contravene Article 14. 16(1) and 16(2), Article 16(4) remove any doubt in this respect.

> "Our Constitution aims as equality of status of opportunity for all citizens including those who are socially economically and educationally backward. The claim of members of backward classes requires adequate representation in legislative and executive bodies. If members of Scheduled Castes and Tribes who are said by this court to be backward classes can maintain minimum necessary requirement of administrative efficiency, not only representation but also preference may be given to them to

enforce equality and to eliminate in- equality. Article 15(4) and 16 (4) bring out the position of backward classes to merit equality. Special provisions are made for the advancement of backward classes and reservations of appointments and posts for them to secure adequate representation. These provisions will bring out the content of equality guaranteed by Article 14, 15(1) and 16(1). The basic concept of equality is equality of opportunity for appointment".

Preferential treatment for members of backward classes with due regard to administrative efficiency alone can mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14. Equality of opportunity for unequals can only means aggravation of inequality. Equality of opportunity admits discrimination with reasons and prohibits discrimination without reason. Discrimination with reasons means rational classification of differential treatment having nexus to the constitutionally permissible object. Preferential representation for the backward classes in service with due regard to administrative efficiency is permissible objects and backward classes are a rational classification recognized by our Constitution. Therefore, differential treatment in standard of selection is with the concept of equality.[61].

Clause (4) Article 16 of the constitution can not be read in isolation but has to be read as part and parcel of Article 16 (1) and (2). Suppose there are a number of Backward Classes who form a sizable section of the population of the country but are not properly or adequately represented

in the services under the state the question that arises is what can be done to enable them to join the services and have a sense of equal participation. One course is to manner to make a reasonable classification under Article 16(1) in the manner to which I have already adverted in great detail. The other method to achieve the end may be to make suitable reservation for the backward classes in such a way so that the inadequate. This form of classification which is referred to as reservation is in my opinion, clearly covered by Article 16(4) of the constitution which is completely exhaustive on this point. This is to say clause(4) of Article 16 is not an exception to Article 14 in the sense that whatever classification can be done only through clause (4) of Article 16, however, is an explanation containing an exhaustive and exclusive provision regarding reservation which is one of the form of classification. Thus, clause (4) of Article 16 deals exclusively with reservation and other forms of classification which can be made under Article 16(1) itself. Since clause (4) is a special provision regarding reservation. It can safely be held that it overrides Art. 16(1) to that extent and no reservation can be made under Article 16(1).

Now reverting to the power of the government to make reservations under Article 15(4) and Article 16(4) of the Constitution, may, be stated thus: the determination of the question whether the members belonging to a caste or group or community as backward for the purpose of Article 15(4) and Article 16(4) of the constitution is no doubt left to the government to call any caste or group or community as backward according its sweet will and pleasure and extend the benefits may be granted under those provision to such caste or group or community. The exercise of uncontrolled power by the government in this regard may

lead to political favoritism leading to denial of just requirements of classes which are truly backward. The power of the government to classify any caste or group or community as Backward has to be exercised in accordance with the guide lines that can be easily gathered from the Constitution.

There is no gainsaying the fact that there numerous castes in this country which are socially and educationally Backward. To ignore their existence is to ignore the facts of life. Hence, we are unable to uphold the contention that impugned reservation is not in accordance with Art. 15 (4). But all the same the government should not proceed on the basis that once a class is considered as a Backward class it should continue to be Backward classes for all times. Such an approach would defeat the very purpose of the reservation because once a case reaches a stage of progress which some modern writers call as take off stage then competition is necessary for their progress. The government should always keep under review the question of reservation of seats and only the classes which are really socially and educationally backward should allowed to have the benefit of reservation. Reservation of seats should not be allowed to become a vested interest.

In *Balaram's case* the state was the appellant. It had come up in appeal against the Judgment of the High Court of Andhara Pradesh [62], had struck down as its order making reservation of seats under Article 15(4). The Court allowed the appeal upholding the government order, Vaidialingam J. In the course of his judgment observed. ---

> "Article 15(4) will have to be given effect to in order to assist the weaker sections of the citizens, as the State has

been charged with such a duty. No doubt, we are aware that any provision made under this clause must be within the well defined limits and should not be on the basis caste alone. But it should not also be missed that a caste is also a class of citizens and that a caste as such may be socially and educationally backward. If after collecting the necessary data it is found that the caste as a whole is socially and educationally Backward, in our opinion, the reservation made of such persons will have to be upheld not withstanding the fact a that a few individuals in that group may be both socially and educationally above the general average. There is no gainsaying the fact that there are numerous castes in the country, which are socially and educationally Backward and therefore, a suitable provision will have to be made by the state as charged in Article 15(4) to safeguard their interst.[63]

The Learned Judge felt that the Backward classes Commission on the basis of whole report the government order has been passed had given good reasons in support of its recommendations . Accordingly the government order was upheld.

The Supreme Courts Held:

"If we depart from the view that caste or community is an important relevant factor in determining social and educational Backwardness for purpose of Article 15(4) and Article16(4) of the constitution, several distortions are likely to follow and may take us away from the sole purpose for

which those Constitutional provisions were enacted. Several factors such as physical disability poverty, place of habitation, the fact of belonging to a freedom fighters family, the fact of belonging to the family of a member of the armed forces might each become a sole factor for the purpose of Article 15(4) and Article 16(4) which were not at all intended to be resorted to by the state for the purpose of granting relief in such cases. While relief may be given in such cases under Article 14, Article 15(1) and Article 16 (1) by adopting a rational principle of classification Article 15(4) and Article 16(4) can not be applied to them. Article 15 (4) and Article 16(4) are intended for the benefit of those belong to caste/ communities which are traditionally disfavored and which have suffered societal discrimination 'in the past. The factors mentioned above were never in the contemplation of the makers of the Constitution while enacting these clauses.

The sections of society which fall outside those designated castes do not qualify for reservations, however society and educationally backward they may be. It is disputed that 46 years of independence have changed the social, educational and economic landscape beyond recognition. There are crores of backward individuals in forward caste and corers forward individuals in backward castes. By making caste the essential condition, the majority judgment have included for reservation all members of backward castes who do not belong to the creamy layer, and excluded all members of forward castes however backward and deserving such a classification patently discriminates against those who

do not belong to these castes which are tested as backward. A backward class may be given the benefit of Article 15(4) or Article 16(4), but the class must consist of a homogenous group- the element of homogeneity should be backwardness characterizing the class .In other words, the link or thread holding the class together should be the backwardness of the members. Such a link or thread can never be supplied by caste. Excluding the creamy layer of the caste would not get rid of the vice that the only link, or the thread binding the benefited class together in caste. In other words a classification may be justified on the ground that it is backward class but never on the ground that it is a backward caste.

"In ascertaining social backwardness of a class of citizens it may not be irrelevant to consider the caste of the group of citizens. Caste can not however be made the sole or dominant test. Social backwardness is in the ultimate analysis the result of poverty to a large extent .Social backwardness which results from poverty is likely to be aggravated by consideration of their caste. This shows the relevance of both caste and poverty is determining the backwardness of citizens. Poverty by itself is not the determining factor of social backwardness The Commission found that the lower income group constitutes socially and educationally backward classes. The basis of the reservation is not income but social and educational backwardness determining on the basis of relevant criteria. If any classification of backwardness classes of citizens is based solely on caste of the citizens. It will perpetuate the vice of caste system. Again, if the classification is based solely on poverty it will not be logical. The society is taking steps for uplift of the people. In such a task groups are classes who are socially and educationally backward are helped by the society. That is the philosophy of our constitution. It is in

this context the social backwardness which results from poverty is likely to magnify by caste considerations. Occupations place of habitation may also be relevant factors in determining who socially and educationally backward classes are. Social and economic considerations come into operation in solving the problem and evolving the proper criteria of determining which classes are socially and educationally backward. It is only by directing society and the state to offer them all facilities for social and educational uplift that the problem is solved. There is no corresponding provision for the socially and educationally backward classes. But there is a provision under Article 340 of the Constitution for the appointment of a Commission to investigate the condition of socially and educationally backward classes and to recommend the step to be taken to ameliorate such conditions. The rule of equality with in Article 14 and 16 (1) will not be violated by a rule which will ensure equality of representation in the services for unrepresented classes after satisfying the basic needs of efficiency of administration .Article 16(2) rules out some basis of classification including race, caste descent place of birth etc. Article 16(4) clarify and explains that classification on the basis of backwardness does not fall within Article 16(2) and is legitimate for the purposes of Article 16(1).[65] The then left front government in West Bengal which had instituted Commission to identify other backward classes. Only after Supreme Court directive which finally accepted the caste reality by announcing five percent reservation of government jobs for the OBCs.

In relation to promoting, "equality of opportunity" could only means subjection to similar conditions for promotion by being subjected uniformly to similar or same kind of tests. This guarantee was, in fact,

intended to protect the claims of merit and efficiency as against incursions of extraneous considerations; the guarantee contained in Article 16(1) is not, by itself, aimed at removal of backwardness due to Socio- economic and educational disparities.

In fact, efficiency tests, as part of a mechanism to provide equality of opportunity, are meant to bring out and measure actually existing inequalities in competence and capacity or potentialities so as to provide a fair and rational basis for justifiable discrimination between candidates. Whatever may be the real causes of unequal performances which imposition of tests may disclose, the purpose of equality of opportunity, by means of tests is only to ensure a fair competition in securing posts and promotion in government service and not the removal of causes for unequal performance in competitions for these posts or promotions[66]. Thus, the purpose of Article 46 and 335, which are really extraneous to the objects of Article 16(1), can only be served in such a context by rules which secure preferential treatment for the Backward classes and detract from the plain meaning and obvious implication of Article 16(1) and 16(2). Such special treatment mitigates the rigor of strict application of the principle contained in Article 16(1). It constitutes a departure from the principle of absolute equality of opportunity in the application of uniform tests of competence. Article 16(4) was designed to reconcile the conflicting pulls of Article 16(1). Representing the dynamics of justice, conceived of as equality in conditions under which candidates actually compete for posts in government service, and of Article 46 and 335, embodying the duties of the state to promote the interests of the economically , educationally, and socially backward so as to release them from the clutches of social

injustice. These encroachments on the field of Article 16(1) can only be permitted to the extent they are warranted by Article 16(4). To read broader concepts of social justice and equality into Article 16(1) itself may stultify this provision itself and make Article 16 (4) Members of Backward Class could be said to be discriminated against if severer tests were prescribed for them. But, this is not the position in the case. All promotes belonging to any class, caste, or creed is equally subjected to efficiency tests of the same type and standard .The impugned rule do not dispense with these tests for any class or group. "Reservation' based on classification of backward and forward classes, without detriment to administrative standards (as this court has under scored) is but an application of the principle of equality within a class and grouping based on a rational differentia the object being advancement of backward classes consistently with efficiency. Article 16(1) and (4) are concordant.. The Court has viewed Article 16(4) as an exception to Article 16(1)

Classification grants under Art. 16(1) ordinarily a lesser order of advantage. The former is more rigid, the latter more flexible, although they may overlap sometimes. Article 16(4), covers all backward classes, but to earn the benefit of grouping under Art. 16(1) based on Articles 46 and 335 as I have explained, the twin considerations of terrible backwardness of the type Harijan endure and maintenance of administrative efficiency must be satisfied. Various provisions are made in the Constitution to safeguard the interest of backward classes. The Constitution however provide various safeguards for backward classes The Constitutions however provide various safeguards for backward classes under Article 15(4), 16(4), 41, 46, 340 (1), 340(2) etc. Thus the

Constitution sincerely contemplates to improve the condition of the backward classes. Thus Dr. Ambedker genuinely tried to raise the socio-economic condition of the backward classes in India. However, it seems that no due cognizance of his effort has been taken by the concerned. The backward classes need to follow him for their own improvement and integrity of the society as whole.

The result therefore follows that the other remaining castes are non-existent either on the ground of not being traceable or on the ground of being synonymous. The five judges Bench of the Court stayed the operation till the final disposal of the case on October, 1990, Again the Union government headed by Sri P.V. Narsimha Rao issued another office memorandum on September 25, 1991 and made two changes in the earlier order issued on August 13, 1990. Added the economic criterion in giving reservation to the proper sections of socially and educationally backward classes in the 27% quota, and reserved another 10% of vacancies for other economically backward sections of higher castes. The Five Judges Bench referred the matter to a special constitution Bench of 9 Judges in view of the importance of the matter to finally settle the legal position relating to reservations as in several earlier judgments, the Supreme Court has not spoken in the same voice on this issue. Despite several adjournments, the Union government failed to submit the economic criteria as mentioned in official memoranda of September 25, 1991.

The 9 Judges constitution Bench of the Supreme Court by 6-3 majority (Justice B.P Jeevan Reddy, C.J M.H Kania, Venkatachaliah, A.M. Ahmadi with S.R. Pandian and S.B Sawant concerning by separate

judgments held that the decision of the Union government to reserve 27% govt. jobs for Backward Classes provided socially advanced person- creamy layer among them are eliminated, is constitutionally valid. The reservation of seats shall only confined to initial appointments and not to promotions and the total reservation shall not exceed 50%. The Court accordingly partially held the two impugned notification (O.M.) dated August 13, 1990 and September 25, 1991 as valid and enforceable but subject to the conditions indicated in the decision that socially advanced person – Creamy layer among Backward classes are excluded. However the court struck down the O.M of Sri P.V.Narsimha Rao's government jobs for educationally backward classes among higher classes. The majority also held that the reservation should not exceed 50% shall be the rule but it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and people. Such situation, some relaxation of this rule may be necessary. In view of this, the majority did not express any opinion on the correctness of adequacy of the Mandal Report. The dissenting Judgment was given by Justice K.T. Thoman, Kuldeep Singh and R.M. Sahai. The minority struck down the two OMS issued by the Union government as unconstitutional and recommended for the appointment of another Commission for identifying the socially and educationally backward classes of citizen.[67]

Dr. Thommen said that wherever poverty and backwardness are identified, it is the constitutional responsibility of the state to initiate economic and other measures to ameliorate the condition of the people residing in those regions. He said that poverty which is the ultimate result of inequalities and which is the immediate cause and effect of

Backwardness has to be eradicated not merely by reservation, but by free medical aid, free elementary education scholarships for higher education and other financial support, free housing, self-employment and settlement schemes, effective implementation of land reform and strict and impartial operation of the law enforcing machinery. The basic structure of the Constitution envisages a cohesive, unified, casteless society- in which casteism petrified for centuries, should become merely the dust on the shelf of Indian History. By ensuring a fresh lease of life to the judgments fractures the nation and disregards the basic structure of the Constitution. The decision would revitalize cateism, cleave the nation into two forward and backward– and open up a new vistas for conflicts and fissifarous forces, and make backwardness a vested interest.[68]

There are crores of backward individuals in forward caste and corers forward individuals in backward castes. By making caste the essential condition, the majority judgment have included for reservation all members of backward castes who do not belong to the creamy layer, and excluded all members of forward castes however backward and deserving such a classification patently discriminates against those who do not belong to these castes which are tested as backward. A backward class may be given the benefit of Article 15(4) or Article 16(4), but the class must consist of a homogenous group- the element of homogeneity should be backwardness characterizing the class. In other words, the link or thread holding the class together should be the backwardness of the members. Such a link or thread can never be supplied by caste. Excluding the creamy layer of the caste would not get rid of the vice that the only link, or the thread binding the benefited class together in caste.

In other words a classification may be justified on the ground that it is backward class but never on the ground that it is a backward caste. The last census records to proceed on caste basis are those of 1931, which was relied upon by the Mandal Commission because they were the latest census records to proceed on the caste basis. Gujarat had become the first state in the country to formally accept the Supreme Court verdict on Mandal Commission Recommendations, providing for reservations in government jobs for other backward communities.

REFERENCES

1. Sharma Sudesh Kumar, Distributive Justice under Indian Constitution (1989, New Delhi) p.77

2. Oppenheim, E, International Encyclopedia of Social Sciences, Vol. 5 at p. 105

3. Shetty. PK, Fundamental Rights and Socio-Economic Justice in the Indian Constitution (1969, New Delhi) p. 160.

4. Rajkumar Gupta, "Justice Unequal But In Separate", II Journal of Indian law Institute, 57, (1969, New Delhi) p. 57

5. Constituent Assembly Debates, Vol. IX at P. 1194.

6. C.A.D. Vol., VII, at P. 37.

7. C.A.D. VOL, III, at P. 409.

8. Supra Note 2 at 102.

9. Article 9 of the Constitution of India

10. CAD. VOL. VII at P. 659.

11. Article 10 of the Constitution of India

12. CAD VOL. VII at PP 681- 82.

13. Id. at PP 686- 87.

14. Id. at PP. 679- 80.

15. Article 16(4) of the Constitution of India.

16. CAD. VOL. VII, at PP. 676- 77.

17. CAD. VOL, VIII at p. 403.

18. Ibid

19. Ibid

20. CAD. VOL. VII at. P. 665.

21. Article 12 of the Constitution of India.

22. CAD. VOL., III, at P-70.

23. Id at P. 453.

24. Id at PP 454-55.

25. CAD. VOL. VII at P. 708.

26. Id at P. 709.

27. Horald J. Laski, liberty in the modern state (1954, New Delhi) p.52

28. Mathew, K..K., The Right of Equality and property the Indian Constitution (1980, New Delhi) p.3

29. T.N. Kitchlu, Scheduled Castes and Problem of Equality (ed 1st, 1972) p. 145.

30. Ibid

31. Tripathi, Legal Theory (1968, Allahabad) p. 387

32. State of Kerala Vs. N.M. Thomas, AIR 1976 S.C. 490 at 573

33. Ibid

34. Ibid

35. Ibid

36. Ibid

37. Ibid

38. K.K. Mathew, "The Right to Equality" IX Journal of Constitutional and Parliamentary Studies (1975) pp. 401- 22.

39. ABSK. (Sangh) Vs. Union of India AIR 1981, S.C 298 at 336.

40. K. Subba Rao, Fundamental Rights under the Constitution of India. (Rt. Hon'ble S. Srinivasa Sastri Lecture, New Delhi) p.24

41. Ibid

42. Jain M.P., Indian Constitutional Law (1987, New Delhi) p.471.

43. Id at P. 472.

44. Jagdish Swaroop, Constitution of India Vol. 1. (1984,New Delhi) at p. 181.

45. Lacchman Das vs. State of Panjab. AIR, 1963, SC 222.

46. Bhudan Choudhary vs. State of Bihar AIR, 1958 SC, 358

47. Ibid

48. AIR 1951 SC 226.

49. M.R. Balaji Vs State of Mysore, AIR. 1963 S.C. 649. R. Chitralekha Vs State of Masore, AIR 1964, S.C 1823. TrilokiNath Vs J$ K AIR 1967 SC 1283.

50. Ibid

51. Ibid

52. Palikhiwala, N.A "Mandal Perpetuates Casteism" The Hindustan Times (November 30, 1992) New Delhi.

53. AIR.1967. S.C. 1283.

54. AIR 1975 S.C. 563.

55. AIR 1976 S.C. 2381.

56. AIR 1981, SC 298.

57. Supra Note 46 at p. 211

58. Id at p. 226

59. Id p. 238

60. Id. P. 25

61. Id. P. 92

62. Id. P. 230

63. Id. P. 76

64. AIR 1974 SC 1631, 1653.

65. Id. P. 226

66. Bhagwan Das (ed.), Thus Spoke Ambedker Vol, 1 at p. 83.

67. Id at p. 87.

68. Balaji Vs. State of Mysore, AIR 1963 SC 649 (658).

Chapter V

LEGISLATIVE MEASURES FOR ENSURING EQUALITY AND NO DISCRIMINATION DURING THE BRITISH ADMINISTRATION OF JUSTICE

LEGISLATIVE MEASURES FOR ENSURING EQUALITY AND NO DISCRIMINATION DURING THE BRITISH ADMINISTRATION OF JUSTICE

The privileges and disabilities on the basis of upper caste specified in the Smirities are quite well known. These social privileges and disabilities had a legal sanction. There is flood of literature available in the form of royal degrees, grants and decision of the courts in the Hindu kingdoms of Vijaynagar and Marathas during 14th and 18th centuries. The Caste system continued at least partially in the native Indian states during the British period. The pre British was a period of Caste dominating the law and administration of justice. The role of law to maintain and consolidate the Caste stratification of society can not be ignored. The caste system had not only the sanction of law but also of the religion. The *Brahmana* was at the apex of the hierarchical organization of caste and that the Hindu kings upheld the institution with the help of their civil power. With the advent of the British as the political head of the administration of Justice, things were bound to take on a different aspect and prospective. The British brought with them their own traditional form of government, and as Christians they could not have much sympathy with the institutions of the Hindus.

As prudent foreigners wishing to consolidation their power over a strong land and people, they decided to leave the peculiar institutions of the severely alone except where they rigorously violated their cherished ideas of government. They introduced a system of education which did not demand the learners any change of religion. Ideas and behavior

patterns, very different from those which the people were accustomed, were thus presented as isolated from religion. The policy of comparative non- interference naturally gave scope for the revolt of the castes that were not quite comfortable under the *Brahmana* supremacy. Later on with the incoming of the modern industrial organization and the growth of industrial cities, large numbers of peoples congregated in cities of mixed populations, away from the influence of their homes and unobserved by their caste or village people. This is the background of the picture of contemporary Caste. Early in the history of British rule and practice of the rulers over the three presidencies was not uniform. In Bengal one of regulations, while recognizing of the integrity of caste organization, allowed suits for restoration of caste to be entertained by the ordinary Courts.[1] It was held that cases of expulsion from clubs are voluntary associations were of an entirely different nature from ex-communication from Caste.[2] In Bombay, however, the pertinent regulation expressly provides that no court shall interfere in any caste question, beyond the admission and t real of any suit instituted for the recovery of damages on account of the alleged injury to the caste and character of the plaintiff arising from some illegal act of the other party.[3] Social privileges of the membership of a caste are held to be wholly within the jurisdiction of the caste. It is only when a complainant alleges that legal right either of property or of office is violated by his exclusion from the caste that a suit may be entertained by a court of law.[4] This autonomy of caste it is further held, exist only under the law and not against it. Hence caste proceedings must be according to usage, giving reasonable opportunity of explanation to the person concerned and must not be influenced by malice.[5]

This recognition of the integrity of caste for internal affairs did not protect the institution from inroads on some of its very vital powers. The establishment of British courts, administering a uniform criminal law, removed from purview of caste may matters that used to be erstwhile adjudicated by it. Question of assault, adultery, rape and the like were taken before the British courts for decision, and the caste councils in proportion lost their former importance. Even in matters of civil law, such as marriage, divorce, etc, though the avowed intention of the British was to be guided by caste- customs slowly but surely various decisions of the High Courts practically set aside the authority of Caste.[6] A qualitative change came with the advent of British administration. A law as given by the political sovereign (or a foreign country) took control the political, economic and social apparatus of the country. The social control of the caste and caste Panchayat and their usages and practices went into background.

Positive laws of state were enacted Section 8 of Bengal Regulation iii of 1793 made a binning in administration of justice in a new direction. Bombay Regulation 11 of 1827 made a further change. The jurisdiction of civil courts shall extend to the cognizance of all original suits and complaints between natives and others (not British born subjects) respecting the rights to movable and immovable property, rents government resources, debts, contract, marriage succession, damages for injuries and generally of all suits and complaints of civil nature. It being understood that no interference on the part of the court and caste questions is hereby warranted beyond the admission and trial of any suit instituted for the recovery of damages on account of an alleged injury to the caste and character of the plaintiff, arising from some illegal act or in

justifiable conduct of the other part. In 1850 the Castes Disabilities Removal Act, (Act 21, of 1850) was enacted. The Act provided- So much of any law or usage now in force it in India as inflicts on any person fore fiction of rights or property or may be held in any way to impair or affected any right of inheritance by reason of his or her renouncing or having excluded from the communion of any religion, or being deprived of caste, shall cease to be on force as a law in any court. The first British administrator on the Bombay side employed, as early as 1836, officials like broadly and steel, compilations of the various usages and customs of castes of the Presidency. These painstaking officers made useful compilations, but similar compendiums were not prepared in other provinces, the result was that the Widow Remarriage Act of 1856 contained clauses practically violating the customs of some of the so- called lower castes. While legalizing the marriage of a Hindu widow, this Act deprived such a remarried widow of al her rights and interest in her deceased husband property. Fortunately the courts have taken reasonable view of these sections of the Act, and have decreed that the Act with its restrictive clauses applies only to these widows who could not, without the aid of this Act, remarry to their castes usage widows of castes allowing remarriage forfeited their rights and interest in their deceased husband property only when caste- usage enjoined such forfeiture.[7] So early as 1876, the High Court of Bombay ruled that court of law will not recognize the authority of a caste to declare a marriage void, to give permission to a women to remarry.[8] When any caste council, in utter ignorance of its changed status, ventures to step in a tribunal to try one of its defaulting members, it is promptly made to realize the force of law. It is well known that one of the most usual

methods in the old regime detecting offences was to submit the accused person to an ordeal of verifying intensity. The caste- council Pakhah Rajputs of Ahmadabad submitted a man and his mother, both accused of witch craft, to an ordeal usual in such cases. As one of the suspect failed to come out successful, the council demanded Penalty for the alleged crime. A suit was filed for recovery of this penalty but was dismissed as being against policy. One of the persons lodged a complaint for defamation against the persons who had complained against them to the "Caste- Council".[9]

The hereditary and prescriptive right of the *Brahmans* to act as priest to all castes of the Hindus with only a few exceptions has been the one uniform and general principle in hearing in caste society through its entire vicissitudes.[10] But here it would be shown how certain decisions of the High Courts have emboldened the non *Brahmanic* castes to dislodge the *Brahmans* from their monopoly of priesthood. In Bengal and North India generally it is now settled that there is no office of priest recognized as such in law, and a householder may employ anyone he likes for the performance of any priestly service. A similar view has been taken by the Madras Presidecy.[11] When in the Maratha region the non-Brahman reformists stared the practice of performing their religious rites without the aid of the *Brahmana* Priest, the latter lodged a complaint asking for an injunction against the persons so violating their rights. The High Court of Bombay decreed that people could engage any priest, but un-like the High Court of Madras, they decreed that the hereditary priest must be paid some fees by way of compensation.[12]

The Castes-Disabilities Removal Act of 1850 dealt another blow at the integrity of the caste. The Act does not, as may be expected from its title, remove the caste but facilitates conversion to another religion or admission into another caste, notwithstanding any custom of caste disinheriting a person for change of caste or religion. This Act provides that a person does not forfeit his ordinary rights of property by loss of caste or change of religion .Regarding the most important aspect, and almost the only surviving one, *viz*, that of prohibition against marriage outside the caste. In some early cases, it was held that marriages between persons belonging to different divisions of the *Brahmanas* or the *Shudras* were invalid unless especially, sanction by custom, but recent decisions decree otherwise. In Madras case, when a Hindu belonging the *Shudra* class, married a Christian women, turned into a Hindu, the marriage was accepted as one between members of different divisions of the *Shudra* class and therefore valid. Integrity of caste was so far recognized; the court held that where a caste regards marriage as valid and treats the parties as its members. The court can not declare it null and void.[13] Under Hindu law, upon degradation from a caste, the Hindu whether male or female, was considered as dead. His degradation caused an extinction of his property whether acquired by inheritance, succession or through any other manner. According to the historians, the immediate probation for passing this legislation was to assure the Indians converted to Christianity that they will not be deprived of their property or any other right. The establishment of new system of the administration of justice from the taluq, district and state level and enactment of the codes, such as the civil and criminal codes and Evidence Act gave a new experience to the Indians of the equality

before law. Section 1 of the Civil Procedure Code excluded caste questions from the jurisdiction of the civil courts. The approach and the effect to these legislative measures was not abolition of the caste system but to demarcate the areas between the new administration of justice and caste control of the personal behavior of its members. A good case law was developed in this regard and caste questions were judicially settled during the British rule. We may note the approach of the courts in dealing with the caste questions with the help of a leading case *Nathuvelij v. Keshwaji Hirachand.*[14] The leading opinion was written by justice Chandrewarker, who was also a social reformer of that period. The parties belonged to Oswal caste having caste having their trade in Zanzibar. The plaintiffs had denied the persons of Lovana caste, contrary to caste prohibition. The Caste Council imposed a penalty that no caste members shall dine with the plaintiffs. The penalty was a form of ex-communication.

Justice Chandawarkar dismissed the appeal of the plaintiffs. The grievances were only against the practices of social privilege simplicitor. There was no civil right such as deprivation of property or office involved. There was no loss of caste and character. The court recognized the disciplinary power of the Caste Council in the matter of social privilege and the appeal was dismissed. In regard to the caste autonomy, the courts followed the principle of the autonomy of voluntary clubs under the English law. The approach of the courts would demonstrate that although in some respects, namely, the civil rights the authority of the caste group diminished but in other respects it received legitimization from the courts in the form of caste autonomy. But apart from the legislative measures some administrative developments during

the British time are also worth noting for the first time in the Census of 1891. People were enrolled on the basis of caste and caste hierarchy. In 1909 Morley Minto recognized special representation of the depressed classes. He started a social movement for organizing caste, associations and constructed their buildings, raised funds, and started their educational institutions. He started helping the caste members by providing funds for education, trade etc. Dr. G S Ghurye, the famous sociologist has summarized the approach of the British rule to caste system and its effect. It is worth while noting it in some details. The activities of the British government have gone very little towards the solution of the problem of Caste. Most of these activities, as must be evident, were dictated by prudence of administration and not by demise to reduce the rigidity of caste, whose disadvantages were not patent to them. On the whole, the British rulers of India, who have throughout professed to be the trustees of the welfare of the country, never seem to be given much thought to the problem of Caste.[15] Their measures generally have been promulgated in half-hearted manner to maintain their safe administrative perpetuation.

The British government did not recognize caste as a unit empowered to administrator justice. Caste was one of its important functions as a community, individual members might, therefore, be expected to feel less of the old feeling of solidarity for their caste group. But nothing of the kind is observed to have taken place. Further, it may be argued that, if the British masters of India did not take any comprehensive steps to minimize the evil effects of Caste which they openly deplored, it must be said to their credit that they did not at least consciously foster the institution. It was almost the unanimous opinion of persons connected

with the government of India that the deep causes were to be found in the fact that the Bengal army was composed largely of the higher castes, viz. the *Brahmanas* and the *Rajputs*. The special Commission presided over by Lord Peel, which was appointed to suggest a recognition of the Indian Army, took evidence from many high officials who were some time or other closely connected with India Lord Elephantine opined that it was desirable that mean of different castes should be enlisted in the Army, while major-general Tucker went further and insisted on the necessity of keeping the country under British domination through the policy of diving and separating into distinct bodies the nationalities and caste recruited of the Army. Such being the general Toner of the main bulk of evidence, the Commission recommended that the native Indian army should be composed of different nationalities and castes and as a general rule mixed promiscuously through each regiment.[16] Lord Ellen Borough advised the same, but clearly pointed the recommendation was based solely on the ground of British interests and not on the consideration of efficiency of the Army. He lamented the fact that if the suggested procedure were adopted: "We must abandon the hope of ever again seeing a native army composed like that we have lost. It was an army which, under a general that it loved and trusted, would have marched victorious to the Dardanelles.[17]. Ever since then, the Indian army has been studiously purged of the higher castes. The lesson of the rising, viz. that the safety of the British domination in India was very closely connected with keeping the Indian people divided on the line of caste was driven home to the British rulers. Some officials like Sir Lapel Griffin thought that caste was useful in preventing rebellion.[18]. While James kerr, the Principal of the Hindu college at Calcutta, wrote in

1885: "It may be doubted if the whole unfavorable to the performance of our rule. It may even be considered favorable to it. Provided we act with prudence and forbearance. Its spirit is opposed to national Union.[19] "The maxim of divide and rule" began to be preached by historians and journalist 's alike.[20] The Rising was largely the work of soldiers of the high castes of *Brahmans* and *Rajputs*. There was Glamour in England that high caste spays should be exterminated.[21] Suspicion of high caste continued. The valuable lesson so dearly purchased was not going to be lost. It being repeated in the form of the general principle of "divide and rule" could not have failed to influence the policy and conduct of latter officials. It is well remembered in this connection that even the Roman Church, in its desire to propagate its faith, has prepared to accommodate caste in its practical programme, though it was opposed to the humanitarian principles of the Church. Pope Gregory published sanctioning caste regulations in the Christian Churches of India.[22] British administrators, following the popular practice, have used caste names as a convenient mode of description of persons. The police reports while giving details about offenders also mentioned their caste. The railway note, that every sender of parcels has to fill in and sign, at least till very recently, as entry for the caste of the sender [23] This can not be regarded as intended to give or elicit information as regards the person's occupation. There is a separate entry provided to describe one's profession perhaps the caste entry has been inserted to enable the officers concerned to form a rough estimate of the moral character of the person.

The unique institution of caste did not fail to arouse intellectual curiosity among the more intelligent of the Britishers in India. Officials as well as

no-officials, and our under standing of the institution is largely helped by their work. Some of the officials like Elliot, Datton, Shirring, and Nesfield, evinced their interest in the subject by collecting information and publishing it with their comments. Later on officials however adopted the easier method of utilizing the decennial census for collecting and presenting in the theories of the origins of caste.[24] This produce reached its culmination in the census of 1901 under the guidance of Sir Herbert Risibly of ethnographic fame with a view to helping us towards presenting an intelligible picture of the social grouping of that large proportion of the people of India which is organized by the native public opinion at the present day and manifesting itself in the facts that particular castes are supposed to be the modern representatives of one or other of the castes of the theoretical Hindu system. And this produce Risibly chose in spite of his clear admission that even in this Caste- ridden society a person, when questioned about this caste, may offer a bewildering variety of replies. He may give the name of a sect, of a sub- caste, of an exogamous set or section, of a heterogamous, he may mention some designation which sound finer than the name of his caste, he may describe himself by his occupation or the province or tract of country from which he comes.[25] Various ambitious castes quickly perceived the chances of raising their status. They invited conferences of their members, and formed councils to take steps to see that their status was honorable to them. Other caste that could not but resent this "Stealthy" procedure to advance, equally, eagerly begun to convert their claims. Thus a campaign of mutual recrimination was set on foot. "The leaders of all but the highest castes frankly looked upon the Census as an opportunity for pressing and

perhaps obtaining some recognition of social claims which were denied by persons of castes higher than their own.[26] In 1911 the Census-reporter for Madras wrote that it had been pointed out to me by an Indian gentle man that the few years, and especially the occasion of the present Census, have witnessed an extraordinary revival of the caste spirit in certain aspects. For numerous caste '*Sabhas*' have sprang up, each keen to assert the dignity of the social group which it represnts.[27]

It is difficult to see any valid reason for this elaborate treatment of caste in the Census Reports. The government has never avowed their intention of helping every caste to retain its numbers and prosperity. Nor have they any time helped a particular caste because it registered numerical decline or economic dislocation Not even the declared policy of the Provincial Governments to provide special representation either by election or nomination to certain classes of people necessitates an enumeration of the people by their castes. For this representation it is not dependent on numbers. It is not proportional. All that the particular officers of the government have to do is to determine in the light of their experience whether a particular person is one who can legitimately claim to belong to one of the three large groups of the population, devised for political purposes. And a court law in any deputed case will settle the point by reference to the usual practice of the people. The conclusion is unavoidable that the intellectual curiosity of some of the early official is mostly responsible for the treatment of caste given to it in the Census, which has become progressively elaborate in each successive Census since 1872. The total result has been a livening up of the caste–spirit.[28] Mr. Middleton, one of the two superintendents of Census operations of 1921, makes eloquent remarks about the effects of

the British administration on caste in the Panjab in his report. He observed: "I had intended pointing out that there is a very little revolt against the classification of occupational castes, that these caste have been legally manufactured and almost entirely preserved as separate caste by the British government. Our land records and official documents have added iron bonds to the old rigidity of caste. Caste in it self was rigid among the higher castes, but malleable amongst the lower we pigeon- hold every one by caste, for them labeled them with the name of a hereditary. We deplore the caste system and its effects on social and economic problems, but are largely responsible for the system which we deplore. Such caste as *Sunar* and *Lohar* would rapidly disappeared and no one would suffer. Government passion for tables and pigeon holes has led to a crystalization of the caste system, which except amongst the aristocratic Caste, it would gradually be replaced by some thing very difficult amongst the lower castes. The situation in the Punjab can not be taken as typical of other provinces. It is well- known that the Punjab was not much influenced by rigid caste system. Yet, the process of Pigeon- holding and thus stereotyping has undoubtedly counter acted wheel ever good result might have insured from administration of justice. The total effect has been, at the least, to keep caste solidarity quite intact.[29]

In the old regime one caste used to petition the sovereign to restrain another caste from carrying a procession through a particular mark. Such cases are on record in the diaries on the *Peshwas*. The British government in India by their declared policy effectively discouraged such interference and thus removed some of the occasions for a demonstration of the bitter caste spirit. On the other hand, the desire of

the Census officials to give an intelligible picture of caste by means of nice grading of contemporary groups has provided a rallying point for the old caste spirit.[30.] The endogamous nature of caste has reminded almost the same with this difference that where as formerly marriage outside one's caste was not to be even thought of, today educated young men and women are prepared to break through the bonds of caste if mutual love or attraction demands it. In Bombay there were many examples, mostly members of younger generation, who have managed their own matrimonial affairs, the parties to which belong to two different castes. A large majority of such marriages, known as enter-caste or mixed marriages, is formed by couples where the female partner belong to a lower caste, is not altogether rare. As for the older generation, it may be said without exaggeration that, in spite of the talk about social reform, it has made very little advance in its ideas of the subject of intermarriage. When therefore, elderly persons arrange the marriages of their wards they hardly ever think of going beyond their caste- even though it be a bride or a bridegroom. If they venture to ignore the limits of the narrowest division it for example a *Chitparan Brahmana* select a girl from the *Karnada Brahmana* caste for his son, in the Maratha Country- he is looked up to as a reformer. It would be hard to point out examples of marriages between members of outright separate caste rearrange for their wards by the elderly grounds. It is the recklessness and enthusiasm 'youth alone that is prepared to transgress the bonds of castes for the purpose of marriage. [31]

When the city of Bombay begun to attract large numbers of people from rural areas, the immigrants, with their traditions of caste, begun to congregate, as for as possible according to their Castes, though the

village affinity influencing the place of residence, modified this tendency. The *Brahmana* Castes of the Maratha country are mostly vegetarians while the other Castes are usually non-vegetarians, The *Brahmanas* had the additional motives of escaping bad odors given out by fish and flesh when they are being dressed, to try to live together in buildings where only *Brahmans* dealt. This tendency for every large caste to live in isolation from other castes has been steadily growing during the last twenty years. It will be observed that this desire is only the old caste practice of reserving special parts of the village, for the different caste molded to suit the changed conditions of the city life. The inclination of the people was encouraged and aggravated by private charity expressing itself through the chants of caste. With the quickening of caste-patriotism, Philanthropic persons have been building hours and chaws to be rented only to their caste members at moderate rents, Charity, intending to further the educational interests of a caste has found expression also in providing to free hotels to the student member of the caste. As a result, in those areas of Bombay which largely inhibited by the middle classes. We find today whole channels which are occupied by members of one or two castes with close affinity, whole buildings rented at moderate or even nominal rents only to the members of particular caste. Building meant for members of particular caste generally bear prominent Boards bluntly announcing the fact of their reservation and where it is a case of individual endowment also the name of the philanthropic donor even the colleges and the University are infested with endowments from which scholarships are to be paid to students of certain specified castes.[32]

The introduction of co-operative schemes of amelioration has afforded another opportunity for caste. Solidarity to manifest itself, co-operative housing more than any other aspect of co- operative understanding, has appealed to the caste spirit, though credit societies of individual caste, like that of the *Reddish*, are not altogether unknown. In fact it would be true to remark that only those co- operative housing societies have succeeded most which have restricted their membership to their caste fellows. Even in business this tendency to restrict the holding of share to the members of a particular caste is sometimes apparent. The *Brahmanas* of Madras started a fund called the "Triplicate Fund" shares in which could be held only by Brahmans. Those responsible for starting it included gentleman of "culture, education and learning" such being the case, we regret that one of the rules of the funds is so narrowly conceived as to exclude all that are not *Brahmanas* from the right of holdings shares. It is just this type of exclusiveness that furnishes interested parties like the ministerial. Tests their nutriment. Those who decry the excesses of communalism should themselves first set the examples of a healthy wholesome, non-communal outlook in the practical affairs of life[33] one feature of Hindu society during the last periods of British administration has been the marked tendency for every caste to form its own association comprising all members of the caste speaking the same language.[34] In the old regime the caste Panchayat or council was usually restricted to the confines of the village or the two Barley, if at all, did the jurisdiction of the council, in the case of majority of cases, the caste consciousness is limited by the bounds of the village and its organizations do not extend beyond the village area.[35] The functions of these new organizations are; to further the general

interests of the caste and particularly to guard its social status in the hierarchy from actual or potential attacks of others cases, the following arrangements were encouraged:

1. To start funds to provide studentships for the needy and deserving students of the caste, usually at the secondary and college stage of education and sometimes even to help them to proceed to foreign countries for higher academic qualification.

2. To help poor people of the caste.

3. And sometimes to try to regulate certain customs of the caste by resolutions passed at the annual meeting of the members of the caste.

All these objects, excepting perhaps that of providing studentships, were used to be achieved in great or small measure, by an arrangement not always permanent. Some times an ad hoc committee would take up the work and carry it out. It has already a known fact to the stubborn opposition of the *Kammalans* of Madras to the supreme position of the Maratha protested from time to time to the court of *Peshwa* against certain restrictions which other castes professed to enforce upon them to stamp their status as low. Surely some elderly persons of the particular caste must have volunteered to put its case before the proper tribunal. Relief of the poor was not usually a duly under taken by a caste. When a caste decided to apply some of its funds to charitable purposes, it handed over the money to the local priest to be used by him for benevolent purposes. The ruling ideals of the time led people to distribute charity in particular channels. The ideal was rather to build

temples and rest houses, dig wells and tanks, and to endow free feeding at the temples for a certain members of *Brahmans* and at the public feeding houses for traveller and others in need. All this directions of charity was most often preached and accepted without reference to caste. Only the artisan Castes which had strong guild take organizations, had some standing provision for helping the indigent among its members.[36] Occasionally a caste would relieve its own poor by feeding them through the headman. The funds for this purpose were available from the residue of the fines imposed on the defaulting members of the caste.[37]

The community aspect of Caste has thus been made more comprehensive, extensive, and permanent. More and more of an individual's interests are being catered for by caste, and the needy who are helped by their caste funds naturally owe much to their caste and later in the look upon it with feelings of gratitude and pride. They feel it their proud duty to strengthen the caste-organization, remembering their obligations to it. Thus a various circle had been created the feeling of caste- solidarity is now so strong that it is truly described as caste-patriotism.[38]

After studying the evaluation of caste during British rule, Dr. Ghurye, had summed up the social position as follows:

"Social and religious privileges and disabilities born of caste are no longer recognized in law and only partially in custom. Only the depressed classes are laboring under certain customary and semi- legal disabilities. Caste no longer rigidly determines an individual's occupation, but continues to prescribe almost in its old rigor the circle

into which one has to marry. One has still to depend very largely on one's life, like marriage and death one's close companions and friends are mainly delimited by the circle of one's caste. The differences between the old regime and contemporary society lies in this that whereas under the ancient organization, the facts mentioned above were almost universally true, today there is a section of society- the modern educated persons small yet important, which has risen from all these restrictions they are bound to serve as become light to the wavering members of society. Attitudes of exclusiveness and distrust, enshrined in the old vernacular proverb, between caste and caste, are still preserved even in the minds of the educated caste associations are very common and command the services of even the most highly educated person to further their object of helping the members of their castes. As long as endogamy is prescribed and practiced, wider self- interest dictates that one should help the arrandisement of the members of one's caste. For the better the economic prospects for the youths of the caste the greater the chances of getting well- to do husbands for one's daughters. The rule of endogamy is in a way the fundamental factor of contemporary Caste. Caste has thus become the centre of an individual's altruistic impulse and philanthropic activities. The existence of definite organization has rallied round the caste the feelings of consciousness of kind. In the desire to help one's fellows, many forget the principles of social justice and are led to do, consciously or otherwise injustice to the members of other caste. Unfortunately, many leaders in civic life are associated with the movement of amelioration of their respective castes. The conduct of these leaders in the matter of the marriages of their wards usually in their own caste, though it may demand such precedence of a caste

supposed to be lower than it in the old hierarchy. Economic conditions have led many castes to clamor for petty jobs in the clerical line. The factor enhances the feeling of caste animosity. Even apex of the ancient scheme, the priesthood of the *Brahman* which has been the great bond of social solidarity in this finely divided society, is being loose need by caste and other caste. At about the end of the British rule of India, caste society presented spectacle of self- centered groups more or less in conflict with another.[39]

In the village a subsistence economy prevailed. The relationship between individuals and group was governed not by contract, but by status i.e. Birth in a particular family, and caste largely dominated one's rights and duties.[40] The progressive transformation of the feudal economy of pre-British India into cabalist economy was revolutionary phenomenon. It bound up with the decay of old classes association with old industries and land system and with the rise of new classes resting on new land relations and new modern industries in place of the village community appeared the modern peasant proprietor and the Zamindar, both private owner of land. The British impact on India led to the transformation not only of the economic anatomy of the Indian society but also of its social physiolognomy.[41] British conquest brought about an agrarian revolution. It created the prerequisite for the capitalist development of agriculture by introducing individual ownership of land, namely peasant proprietorship. The capital transformation of village economy and the destruction of the self sufficient village were a progressive event. The basis of the social change can be noted below:

> "The general process of change was due to the disintegration of social system bases on group or corporate relations of status. The decline of occupational specialties, increasing use of many growth of fictionalization, changes in the interdependence of castes and a tendency for the depressed to find common cause in economic and political interests for the double process of Sanskritisation and Westernisation.[42] Without other things, the British brought with literature full of thoughts on individual liberty."

The British government did not recognize caste as a unit to empower administration of Justice Caste retained its cultural integrity. Many aspects of the British administration provided more than sufficient incentive for the consolidation of the Caste group. The government of Bombay in its memorandum submitted to the Indian Statutory Commission (Simon Commission) complaining that the distinct local Boards where the non-*Brahmans* have had majority "have almost in every case attempted to oust the *Brahmans* regardless of all consideration of efficiency.[43] Two marked characteristics of British administration under the crown were its integrity of all welfare before the law and impersonality and respect for personal liberty were the addiction to the whole changed social environment. It was the unifying influence exercised on India by an all powerful impartial bureaucracy determined to secure equality and dedicated to the establishment of a uniform system of administration.[44] For the first time in history, India became administratively one. Maintenance of peace an order, rule of law, belief in liberty, modernization of the country, laying of firm financial foundations for the state, fight amongst famine and disease,

increase, agricultural resources and provision of stable, political conditions changed the whole atmosphere of India. India attained common Indian nationality. A common system of law and a uniform code of government preceded a large measure of unity. Political association under a single rule begun to unite the people of India together. English education, development of modern communication, Local self governing institutions, early steps toward, a small measure of self government and the foundation of the congress hastened this process. British influence on Hindu traditions was immense. It led a small but important section of highly educated Indian to abandon their traditional Hindu thought and feeling and adopt a western outlook of life and philosophy as Macaulay's famous "Minutes" on education had its desired result. His aim was to create a class of persons who would be "Indian in blood and color, but English in morals and in intellect". K.M. Pannikar described this decision as "the most beneficent and revolutionary decision".

The insistence on civil liberties, supremacy of law, government based on universal franchise, extension of the conception of political community to the interrelation, parliamentary democracy, judicial system, a belief in progress and a forward looking attitude were the far-reaching contributions of British rule. India was a colonial appendage of Britain. The replacement of traditional industries by modern one's brought about economic integration of the Indian people. This nation emerged as the off spring of British conquest in India. As a natural consequence of the new capitalist structure new classes sprang up. The growth of absentee landlords and agricultural proletariat become complete, but the peasant

proprietors developed national consciousness. Marx described this bourgeois revolution in Indian history.

Dr. Ambedkar in his book "who were the *Shudras*" has lucidly explained in his preface the impact of those laws on caste system: "In a way they are right when they say that the existing law in British India does not recognize the caste system prevalent in the Hindu society. It is true that having regard to section 11 (9) of civil Procedure Code, It would be possible for a Hindu to obtain a declaration from civil court in British India have to consider the question whether a person belongs to a particular *Varna.* It is only in cases of marriage, inheritance and adoption, the rules of which vary according to the *Varna* to which the party belongs before Hindu Code.

While it is true that the law in British India does not recognize four *Varnas* of the Hindu. To put it precisely, it does not mean that the *Varna* system it not given effect to in cases where the observance of its rule is necessary to acquiring civil rights. It only means the general legal sanction behind the *Varna* system has been with drawn. With the legal prohibition, this religious sanction has been more than enough to keep *Varna* system in full bloom; because it has religious sanction. The Varna system has the fullest social sanction from the Hindu society. There are some physiological inequalities, which can not be removed. Men are by nature born unequal. Some are healthy while others are weak. Some are intelligent while others are foolish. They differ in their social inheritance, individual capacities and abilities. This Dr. Ambedkar clearly recognizes in his social thought. Thus, to agitate for equality, in physical as well as mental sense, would be to cry in the wildness [45]But

all people deserve equal treatment, in all spheres of life, in so far as they have some things in common. The equality of all human beings is a point of democratic doctrine. Broadly speaking; the very uniqueness of each and every person creates a kind of equality that is important in a democratic out look.[46]

According to the Dr. Ambedkar, all men have value capacities, which can be measured, easily, by their co- religionists. Every one has some value contribution, in the civic order, in which he lives. So every one must have an equal voice or sphere in the determination of the law of his land. He demands that protection of law must be accorded to every member, without any regard to group status because all men are conscious of their rights. Modern society can not escape from such a demand being made by the modern man. Permanent social behavior patterns based on caste, birth and wealth, have no meaning at all, if common humanity is to survive. Thus on rational grounds, the first essential meaning of equality, as conceived by lies in an equitable balance between rights and duties, claims and satisfaction, irrespective of any distinctions.[47]

This gives right to the notion of legal rights. In the modern world, the differences among the rights of the people are taken seriously. This is all members of a society, Dr Ambedkar emphasizes, should be allowed to participate in all democratic institutions and be given their legal rights. This means the recognition of the equality of all before law. This equality before law is the main foundation in Dr Ambedkar's concept of social equality. This is quite visible in the system of the fundamental

Rights, that he, very wisely, introduced in the Constitution of free India.[48]

Equality before law involves political equality and economic Justice, Political equality gives rise to political rights and the economic justice gives rise to economic equality. Economic equality can not be sustained on the proposition that all wealth should be distributed to all, in equal shares. This is impracticable. The only thing that Dr. Ambedkar emphasizes is the 'equality of opportunity'. It is a legitimate demand of the present generation. It should be realized on the basis from each according to his worth, to each according to his work. The idea of equality of opportunity must be associated with the idea of maximum good its fundamental importance lies in the determination of fair shares. Hence, Dr. Ambedkar's suggestion of the State control through the law of the constitutions is worth consideration. It can prove every one with full equality of opportunity. In other words, mixed social economy, for all practical purposes, is the principal means of accomplishing the social and economic ends of our life, in the modern Indian society. Dr. Ambedkar's concept of equality aims for the elevation of the well being of the masses as well as preserving the dignity of the individual.

The moral standard of a society practiced in and enforced by the general social and moral conscience is the source of the notion of justice.[49] Justice, like equality, democracy and development, is a word of ambiguous import and possesses a basic absolute meaning and plural relativist meaning dependent on specific social conditions and molded by time, circumstance and cosmic changes. Indeed, history, Geography, and cultural Anthropology often meet, to condition these concepts, their

color and contours.[50] In Dr. Ambedkar's Social Engineering, there is no Caste, no suppression , and no exploitation . All persons are equal, to him, the new society should be organized on equality and the absence of caste. Only in such a society, people may hope for justice.[51]

Dr Ambedkar does not undermine the importance of the individual in relating exigencies to new social rules. He believes in the intrinsic worth of each person and right ordering of social relations, the soul of all morality and social justice. The moral world is a world of individual persons, each intrinsically valuable, but all existing in time, and all accordingly subject to the conditions of a time process. The intrinsic value of each personality is the basis of social and political thought, just as it is the basis of moral thought. And the worth of persons, i.e. individual persons, is the supreme worth in the state. The end of any national society is to foster and encourage, in and through partnership, the highest possible development of all the capacities of human personality in all of its members. This end is justice. For such ordering of society, and may accordingly be called by the name of social justice. for such ordering of society, Dr. Ambedkar did every thing and ultimately proved himself a staunch supporter of social justice by fostering new social and political values in the life of the people of India. He fought against social barriers and founded social justice on the principles of liberty, equality and fraternity, cooperation in the constitution of this country.

Man is a responsible as Dr. Ambedkar believes, for maintaining justice and peace in human society. No one can escape from the bearings of his actions, Man's action also affect the social environment. There is a

mutual effectuation between man and society. Society may benefit itself by a good moral order, if man's actions are good, and it may suffer from lawlessness, anarchy and violence, if man's actions are bad and wicked. The prosperity of man depends upon man himself. The development of human society, too depends upon man. For society can not be conceived without man. This is why, to Dr. Ambedkar the behavior Patterns of man are responsible for any state of affairs in society.[52]

Justice peace and moral order, in the Buddhist terminology, all stand for righteousness. Righteousness man's" right relation between man and man in all spheres of life" One man living alone does not need any morality of Justice. But when there are two men living in relation to one another, they have to find a place for morality and peace whether they like or not. Human beings can not escape from just relations. For without them, society can not grow, it can not survive long. This is the reason why Dr. Ambedkar attached a great importance to the need of right relations, i.e. social morality which sustain society in the crisis. It can prevent the acts of barbarism, injustice and inhumanity, Man, by following the path of righteousness can pave the way for peace and justice which serves as effective coordination among people themselves. Dr. Ambedkar says "Morality comes in only where in man comes in relation to man".[53] It arises from the direct necessity for man to love man. It does not require the sanction of God. It is not to please God that man has to be moral, it is for this good that man has to love man.[54] Man is, thus, responsible for all things in human society. If he wants to be moral and peaceful, he had to love man, love is the real foundation of man spring of justice in human society

Dr. Ambedkar believes that war is futile though at the same time, he observes that "the problem of war is essentially a problem of conflict" It simply constitutes a part of a larger human problem. He accepts that war is the root of all sorrow and suffering in the world. In fact, the conscience of man has developed with time and today war is not glorified. It is recognized as a bad means. It is an evil. A majority of people hate the acts of war and violence, because these acts hamper human peace and progress. War and violence, therefore deny justice to man himself. Dr Ambedkar accepts that war causes a great loss to human life and to material prosperity of the people. It leads to perdition destruction and devastation and also effects humanity by creating hatred and ill- will. It is wrong to glorify it any call it a virtue. It is base on greed and enmity rather than principle and necessity and it does not man humane it is dangerous, perilous and harmful for human society. The guidance of war is temporary while the guidance of peace is permanent and lasting to human ends. Dr. Ambedkar does not dilate much on the problem of war. He says in simple words, "war is wrong".[55] It should not be glorified and practiced at the cost of human lives.

As social institution, *Varna* and *Jati* have undergone changes but have shown the rarest of resilience to survive. They have survived the major political upheavals, invasion by Alexander, Genghis Khan, Timur Ghazanavi and Nadir Shah. They have withstood the onslaught of anti-caste religions, Buddhism, Jainism, Christianity, Islam and Sikhism, Neither the Upanishadic metaphysics nor the Advaita Bhakti Philosophy preached by saints all over India had any serious impact on them. The reformist movement of the 19th century, such as Brahmo Samaj, Arya Samaj, or Prarthana Samaj have not made any appreciable dent on them.

Western ideas to liberal democracy and equality or the principles of social justice (of socialist creed) could hardly push them into background Mahatma Gandhi's message of love, tolerance and conversions to Christianity or Islam and even conversion of Dr. B.R Ambedkar (and his followers) to Buddhism did not make the caste-system irrelevant it only created a new caste neo-Buddhists.

Prohibition of discrimination on the ground of caste imposed by Article 14, 15 and 16 of the constitution and its enforcement for the last years[56] has hardly led to the establishment of a caste less society or to any significant step in that direction. In spite of abolition of untouchability by Article 17, the dragon is still at large, Infect, atrocities on the *Harijans* are on increase. Except for family (which is a natural institution), no other institution known to human civilization has shown such strong instinct to survive and dominate. The Caste system, in true sense of the term, is suigeneric. Ancient Hindu Society, ordered on the Model of Manu's dictum showed complete subservience of the law to the caste system. Law not only helped to maintain the status quo of the caste divisions but distributed to their further creation, consolidation and efficacy Islam as a religious system provides a casteless social order in theoretical frame work, but in practice in appears that Muslim as a community, have accepted the influence of Hindu Caste System.

The Constitution on the other hand, aims as establishment of a more equal and just social order. The constitution has established (at least theatrically) the supremacy of law. It is itself a fundamental law. The social order is what the organic law preserves. It prohibits continuation of certain institutions and practices, which are contrary to establishment

of a just and equitable social order. All agencies of State, including courts, are to translate the basic plan of the constitution in concrete measures. There are long-term measures and short- term actions. The notorious tenacity of caste system (in dominating the social life) has rendered the problems of social engineering to tardy and difficult.

How to reconcile organized caste claims for political domination with the long- term goal of a caste less society? How to achieve equality when the ringing cry is for equalization? How to break narrow caste consideration in personal matters such as marriages? What is the formula is making public opportunities for education and for public service available to those, who were denied the same for ages? But a more fundamental question is how to resolve these controversies peacefully within the frame work of law and by known legal methods of resolving disputes? How to stop extra- constitutional and extra- legal eruptions into caste riots and atrocities? They threaten the very existence of a constitutional and legal order. These problems are socio-legal problems. We may, therefore note how the sociologists analyze them.

The main features of *Varna* are—

1. There are only four Varnas-Brahmana, Kshtriya, Vaish and Shudra. If *Harijans* who are literally beyond the "Pale of Caste" are included, they are five.

2. There is a single hierarchy, without any variation between one region and another,

3. The hierarchy is clear and,

4. It is immutable.

This hierarchical pattern is a hall mark of caste system also.

According to one theory, the various castes are created by marriages between two *Varnas* of different hierarchical order. Whatever is original theory, Caste are hierarchy that is, by birth. They are endogamous groups. That is, the marriages take place in the same caste. Each of these groups has traditional association with one or two occupations. Everywhere there are priests, peasants, artisans, trading and serving castes and untouchables. In its fundamental characteristics, caste, is undoubtedly an all- India phenomenon. The origin of Verna and therefore, the Caste is traced to the sacred religious books like the Vedas and Gita. Certain Hindu theological ideas, such as Samsara Karma and Dharma are woven in the caste system.

According to the *Varna* mode the *Harijans* or untouchables are out side the Caste system and contact with *Harijans* pollutes members of the other four *Varna*. But if economic, social and even ritual relations between the caste of a region are taken into account, *Harijans* are an integral part of the castes system. They perform certain essential economic takes in agriculture, they are often village servants, messengers and sweepers, and they beat the drum at village festivals and remove the leaves on which people have dinned at community dinners. Infect, the relations between various Castes are invariably expressed in terms of this idea of pollution and purity.

Among the caste the Brahmans are given a very elevated position. As against the Brahmans, *Shudras* are given the lowest status in society. He

had to serve the twice-born Castes, and under the Smriti-laws has no identity of his own. He is to use the cast-off shoes, umbrellas, garments and mat discarded in his favour by his master.[57] What is worse, a Smiriti-rule even goes to the extent of making it the responsibility of a *Shudra* to maintain his master of the highest caste if he fails into distress.[58] His accumulated savings are meant to serve this purpose.[59] Slavery is reserved for *Shudras*. The *Shudras* appear to have been relegated to a position of abject humiliation.[60] A *Shudras* whether bought or unsought may be compelled to serve the twice- born, for "he was created by the self-existent *Swayambhu* to be slave of the *Brahmana*".[61] Even though he is emancipated by his master he is not released from servitude since that is innate in him.[62]

The Caste had fully developed in the upanishadic age (700B.C.) in the *Ramayan* age (2000 to 7oo B.C.) there were various occupational castes. They had their own caste feelings. In the age of *Mahabharat* (2000 to 700 B.C) the *Varna Vyavastha* was practically more complex. K. M. Pannikar observed that structure of society in the *Mahabharat* is based on caste but the difference between the Ramayana and *Mahabharat* in this matter is most significant. In the *Ramayana*, Rama is bound by his *Kashtriya* duty to kill a *Shudra* who performs tapas or asceticism and though with reluctance he performs his duty.[63] In the Buddhist period, occupational caste had also been well established. There was a *Dass Pratha* in Buddhist age. Both men and women were included in *Dass Pratha*. The *Chandals* regarded the lowest beings used to live outside the village. Their main duty was to burn dead bodies of other castes. The seeing of *Chandal* was enough to pollute a man. The *Chandals* are name 'Evil men' and dwell apart from the others, if they enter the town or

market, they sound a piece of wood in order to separate in themselves , then men knowing who they are, avoid coming in contract with them.[64] Besides, *Chandals*, many other lower castes had been formed. Then merged untouchability which was the out come of the struggle for supremacy between Buddhism and Brahmanism.[65] With the decline of the Buddhist age, Foreign forces had started invading India. During the Muslim Rule the Caste assumed greater rigidity. The caste system gave way to the Muslims for their success, in conquering India and ruling this nation for a long time. Numerous castes were evolved in Muslim age.[66]

The social organization of the Hindus inherited from the Pre- British period had many oppressive and undemocratic features. The segregation of a section of the Hindus as untouchables, who were precluded from such elementary rights as the rights of entry to public temples or of the use of public wells and tanks, and the Physical touch of whom contamination a member of the higher Castes, Constituted a most inhuman of social oppression. Though the untouchables were the out caste of Hindu society, they were its prescribed part.[67] Untouchability was the social fruit of the Aryan conquest of India. In the process of social interaction, a portion of the indigenous conquered population was incorporated in the Aryan Fold. For centuries, Untouchability persisted in the Hindu society. Even extensive and profound humanitarian and religious reform movements such as started by *Buddha, Ramanuja, Ramanand, Chaitanya, Kabir, Nanak, Tukaram* and others, hardly affected the inhuman and age long institution of untouchbility. Hallowed with tradition and sanctified by religion, it continued to exist in all its barbarous vigour for centuries. According to Dr, Ambedkar, the conditions of untouchables in India was no better than those of slaves.

He quoted the definition of slaves as given by Plato.[68] He said that Plato's definition of slaves was appropriately applicable to the untouchables in India because of the following things.[69]

They were so socialized as never to complain of their low state. They never dreamed of trying to improve their lot, by forcing the other classes to treat them with the common respect.

The idea that they had been born to their lot was so ingrained in their mind that is never occurred to them to think that their fate was not irrevocable.

Nothing would ever persuade them that men are all made of the same clay, or that they have the right to insist on better treatment than that meted out to them.

Dr. Ambebkar said that the word 'untouchable' is an epitome of their ills and sufferings. Not only has 'untouchability' arrested the growth of their personally but it comes in the way of their material well- being. It has also deprived them of certain civil rights to him, the plight of untouchables remained unchanged throughout the centuries. The condition of untouchables during the British Rule presented a dismal picture of exploitation, degradation and demoralization. Even the Social reform movements, before the Indian Independence like the *Brahmo-Samaj*, the *Prarthana Samaj*, the *Arya Samaj* and *Satya Shodhak Samaj* failed to exert any effective influence in ameliorating the condition of the untouchables.[70]

Brahmins were at the Apex of the hierarchical organization of caste, and that the Hindu kings upheld the institution with the help of their civil

power. With the advent of the British rule in India, things were bound to take on a different aspect. The British brought with them their own traditional form of Government. As Christians they could not have much sympathy with the institutions of Hindus. As align wishing to consolidate their power over a strange land and people they decided to leave the peculiar institutions of the country as such except where they found violated their plan of governance. Later on, with the advancement of the modern industrial organization and the growth of the industry, large numbers of people concentrated in cities of mixed populations, away from the influence of their homes and caste rigidity. The advent of the British in India, their ideology, system of education, concept of rule of law, their imperial interests and work of Christian missionaries brought the Indian society into contact with a new world of ideas and thoughts. The western impact and capitalistic mode of production introduced in the country opened new areas of accommodation, adjustment and job opportunities.

The very nature of these new avenues put the traditional social order into severe strains. The incompatibility of its traditional principles and practices *vis-a-vis* the vistas of emerging, political economic system, gave rise to serious thinking among the intellectuals about the validity of the discriminating Hindu social order and consequential social reform movement, challenging its every basis, the religious and philosophical doctrines. In early British rule, the practice of the rulers in three presidencies was not uniform. In Bengal the ordinary courts were allowed to entertain suits regarding castes whereas in Bombay the regulation expressly provided that no court shall interfere in any caste question. Regarding the important aspect that no court is of prohibition

against marriage outside caste, it was held that marriages between persons belonging to different divisions of the Brahmins or the *Shudras* were invalid unless especially sanctioned by custom, but later decisions have entirely different approach. Social reformers were not satisfied with the existing state of affairs, and legislators tried to introduce bills legalizing inter-caste marriages. The special marriages Act of 1872 made it possible for an Indian of whatever caste or creed to enter into a valid marriage with a person belonging to any caste or creed provided the parties registered the contact of marriage, declaring *inter-alia* that they did not belong to any religion. Under the old regime of caste-system, certain sections of Hindu society which were regarded as untouchables were devoid of many of civil rights. The question of removing their disabilities and placing them on a footing of civil equality came up for consideration before the British administrations. In 1925, a bill was introduced in the Madras Legislative Council to put under statute the principle of a resolution passed in the previous session of the council throwing open all public roads, streets or pathways, giving access to any public office, well, tank or place of public resort, to all people including the depressed.

It must have become clear by now that the activities of the British government have gone very little towards the solution of the problem of caste. Most of these activities, as must be evident, were dictated by prudence of administration and not by a desire to reduce the rigidity of caste. The most important step they have taken in some of the provinces that a definite percentage of posts in the various services shall be filled from the members of the non- Brahmin or the intermediate castes, provided they have the minimum qualifications. This was originally the

demand of the leaders of the non-*Brahmin* movement. And it is the most obvious remedy against caste domination, On the whole, the British rulers of India, who throughout professed to be the trustees of the welfare of the Country, never seem to have given much thought to the problem of caste in so far as it affects the nationhood of India. Nor they did show willingness to take a bold step rendering caste innocuous. Their measures generally have been promulgated piecemeal and due regard to the safety of British Domination.

REFERENCES

1. Kikani L.T., Caste System in India (1912, New Delhi) p 3
2. Id at p.7
3. Id p. 3
4. Id. at p. 132.
5. Id. at p. 12
6. Id at P. 136
7. Ghurye, G.S, Caste and Class in India (1957, Bombay p. 185.
8. Mayne J.D.A, Treatise on Hindu law and Usage (1914, New Delhi) pp. 779-782.
9 Mandlik, V.N., Vyavahara Mayakha (1880, New Delhi) p.430.
10. The Times of India (Bombay) 30th June, 1928 p.6
11. Ibid
12. Ibid
13. Latthe, A.B., Memories of His Highness *Shri Shahu Chhattrapati*, Maharaja of Kolhapur (1924) Vol. II P. 373.
14. Supra, Note 7 at 108-9.
15. Ibid.
16. The Legislative Assembly Debates, Vol. III, pp. 3899- 926.
17. The Bombay Chronicle, 31st March, 1924, p. 36

18. Mohd. Taj, Caste Society, Social Justice And Constitution of India: Dr. B.R. Ambedkar's Perspective (Master Dissertation 2005) p. 141.

19. Ibid

20. Ibid

21. Bombay Chronical, 1st May, 1925 p. 76

22. Memorandum submitted by the government of Bombay to the Indian Statutory Commission, 1928, (1929) p. 228.

23. Id. at p. 44.

24. Id at 46

25. Notices by the Dean of the Grant Medical Colleges and the Principal of the Gujarat College in The Times of India, 26th April 1926 p.7

26. Ibid

27. Ibid

28. Ibid

29. Ibid

30. Ibid

31. Sharma Sudesh Kumar, Distributive Justice under Indian Constitution (1989, New Delhi) p. 77.

32. Trotter, L.J. History of India under Queen Victoria, Vol. II 1886 p 99 The Times of India, 3rd July, 1897

33. Edward Sullivan, Letters on India (1858, New Delhi) pp 124-125.

34. Encyclopedia Britannica, 11th Ed. Vol. V P. 468.

35. Ibid

36. Kitts, Justice J, A compendium of the Castes and Tribes found in India, (1865, New Delhi) P- 1.

37. India Census (1901, New Delhi) pp. 537-8.

38. Bengal Census, 1921, P-346.

39. Madras Census, 1911, p-178.

40. Ibid

41. Wad. S.B Justice, Caste and Law in India (1984, New Delhi) P-10.

42. Ibid

43. Ibid

44. Ibid.

45. Ibid

46. The earliest of such organization is one started by a Bihar caste in 1891. Memorandum for the Indian Statutory Commission, Bihar and Orissa, p. 87 by 928 such *Subhas* existed for most of the principal Casta of Bihar.

47. Mitthai, John Village Government in British India (1915, New Delhi) p. 65.

48. Id. at pp 65, 68- 9.

49. Mukharji Radha Kund, Local government in Ancient India (1911, New Delhi) P. 86

50. Ibid

51. Ibid

52. Sri Niwas, M.N. Caste in Modern India and other Essays (1932, Bombay) P. 73.

53. Desai, A.R, Social Background of India and other Essays (1962, Bombay) P. 32.

54. Mekiem, Mariott, Village India (1956, Chicago) p. 8.

55. Simon Commission Report, P- 941.

56 Kesari Marathi weekly September 5, 1922 p.6

57. Id.at 62.

58. Id. at 65.

59. Banerjee SC Dharam Sutra: A Study in their Origin and Development (ed. Ist, 1962 Calcutta) p. 201.

60. Manusmriti: VIII p. 313.

61. Id. at 414.

62. Pannikar K.M., A Survey of Indian History (1963, Bombay) p. 16.

63. Beal Samuel, SI-YU-KI Buddhist Records of the Western World (1981, Delhi) P. XXXVIII. .

64. Ambedkar BR, The Untouchables (1948, New Delhi) p. 204.

65. Malley. L.S.S.O., CIE, ICS, (Rtd.), India's Social Heritage (1976, New Delhi) p. 16

66. Desai, A.R. Social Background of Indian Nationalism (1959, Bombay) p.263

67. Id. at 263- 64.

68. Ibid.

69. Supra note 7 at p. 142

70. Id at pp. 283- 284.

Chapter VI

EQUITY THROUGH JUDICIAL PRONOUNCEMENTS

EQUITY THROUGH JUDICIAL PRONOUNCEMENTS

The judiciary is to interpret the laws in such a manner that the maximum benefit of social legislations can be given to those for whom it is meant, and the judiciary should act as a good agent rather than as a brake. What is happening now-a-days is that the jurisdiction to administer justice by the subordinate courts and even the High court is being usurped by the supreme court of India. This jurisdiction being assumed under the garb of 'Special Leave Petition' which is a clear cut negation of the theory of Separation of Power. The court has, time and again, invited the citizens from every corner of the country to drop a post card to the court mentioning a grievance and a writ will issue.[1]

The new development of 'Public Interest Litigation' has created a rift amongst sitting judges in the Supreme Court. The followers of one view regard that the function of the court is to apply the law as it is in matters before it, where as the other view is that the courts should take on the role of an activist and work positively to achieve the social aspirations, meaning thereby, that the judges should confirm to the social philosophy of the state. Between these two extreme ends, the judicial system has to strike a golden mean i.e. the law should be interpreted with a view to do justice -social and economic without transgressing the written law.[2]

In the constitutional scheme the Indian Judiciary acts as an instrument of social revolution. It has been vested with large number and great

variety of powers, so as at perform the task of evolving the Indian Constitution, in the form of continuous Constituent Assembly, its interpretative role. The Supreme Court is not only the final arbiter over the federal relations but it is the guardian of the Constitution and the rights of citizens. The whole judiciary has been commanded by the Constitution to play role of social engineering. Justice P. A. Chaudhary has very aptly remarked, "in no other part of the democratic world law has thrown such a heavy responsibility for nation building and social reconstruction on the judiciary as it has been done in India".[3]

The Constitution makers conceived of a reasonable reservation policy but the reservation has, unfortunately, become a source of societal tension and political war. The devil of communalism and casteism which was constitutionally buried is raising its ugly head through political activities. Caste has really become the strongest party in India.[4]

According to Justice Subba Rao, "casteism has been projected into every walk of life admissions to educational institutions, appointment to Governments services, Government contracts/licences, Elections and the Formation of Ministry".

Articles 15 and 16 explicitly rule out discrimination on the ground of religion, race, caste etc., but certain provisions for preferential treatment to depressed classes like women, children, Scheduled Castes and Backward classes and they have been secured in order to minimize the side affects of strict adherence to the equality rule. Article 15(4) allows preferential treatment in favour of "socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes," whereas Article 16(4) speaks of protective discrimination in favour of

"backward class of citizens which, in opinion of the state, is not adequately represented in services under the State." The criterion or standard for adjudging the consumers of protective discrimination under these two Articles have been the same.[5]

India, for centuries, has been the seat of a social system based on inequality, exploitation and injustice. The poor have not only suffered economic exploitation but have undergone and are still being subjected to social indignation of all kinds. After independence, the makers of the Constitution realized the need for social and economic justice. Nehru asserted and remarked: "there is a duty cast upon us and to remember always that we are here not to function for one party or one group, but always to think of India as a whole and always to think of the welfare of the four hundred millions that comprise India". Referring to the pervasive and poignant problem of mass poverty, Nehru warned: "If we cannot solve this problem soon, all our paper Constitution will become useless and purposeless".[6]

The Constitution of India is a social document with most of its provisions directly or indirectly aiming at furthering the goals of social justice. The preamble, the chapters on Fundamental Rights and the Directive Principles of State Policy[7] mandate the state to strengthen political, social and economic democracy. Justice, liberty, equality and fraternity are the guiding principles of the new Document. The judiciary in India, specially the higher judiciary has been assigned a vital role in upholding the federal principle, interpretation of laws made by legislatures and testing their constitutional validity, and protecting the fundamental rights of the citizens. The Constitution of India does not

recognize the doctrine of separation of powers as it exists in the United States. Apart from the powers vested in the Supreme Court by the Constitution, the Court on its own has expanded its own jurisdiction under the garb of judicial activism to meet the welfare requirements of the Constitution. The prophecy of Sir Alladi Krishnaswami Ayyar[8] that "the future evolution of the Indian Constitution will depend to a large extent upon the Supreme Court and the direction given to it by that Court", has come true.

An important issue that has assumed significance in recent times has been the activist role played by the judiciary especially the Supreme Court. The expression "judicial activism" has eluded a precise definition as it means different things to different people. Broadly speaking it implies dynamism, judicial creativity and judicial sensitivity to social and economic problems. This new role is a deviation from its traditional role of administering justice according to law. The new role visualizes the urge to meet the hopes and aspirations of the teaming people. Technically, it is the Legislature and Executive that are responsible for establishing socio-economic justice when they fail or fatter to do it, the judiciary cannot sit as a silent spectator. During the past four decades, the role of the apex court changed from the "interpreter of laws" to that of "maker of laws". In fact, its activist role began in the fifties when it had to pronounce on the validity of agrarian reforms introduced by the Parliament and the state legislatures.[9] Since then there is no looking back.

The Constitution of India does not provide for judicial review in explicit terms. It is implicit in Article 13(1) and (2), 32(1) and 226. In

Kishavananda Bharti vs. State of Kerala[10], Khanna, J. observed: "If the provisions of a statute are found to be violative of any Article of the Constitution which is touchstone of the validity of all laws, Supreme Court and High Courts are competent to strike down the said provision".[11]

The Constitution treats the Scheduled Castes and Backward classes in India with special favour and accords them with certain safeguards. The Constitution, however, does not specify the tribes or the castes which are to be called as the scheduled castes or the scheduled tribes. It leaves the power to list these castes and tribes to the President. The scheduled castes, according to Article 366(24) read with Article 341, are those castes, races or tribes, or parts thereof, as the President may notify. According to Article 341(1), the President may be specify castes, races or tribes, or parts of groups within caste, races or tribes which shall be for the purpose of the Constitution be deemed to be scheduled castes in relation to that State. Thus, the classification of scheduled castes may vary with state and Union territory. As regards the states, the President issues the notification after consultation with the Governor of the state concerned. The purpose of this provision is to avoid disputes as to whether a particular caste should be specified as a scheduled caste or not. Only those castes can be characterized as scheduled castes which are notified in the Presidential Order under Article 341.[12] Under Article 341(2), however, Parliament may by law include or exclude from the list of Scheduled Castes occupied in a notification by the President any caste, race or tribe or part of or group within any caste, race or tribe.

The Scheduled Castes Order 1950 stipulates that "no person who professes a religion different from the Hindu or the Sikh religion shall be deemed to be a member of scheduled castes". This means that if a member of scheduled castes converts to another religion, he would cease to be a scheduled caste. The Supreme Court in *ABSK Sangh (Rly) VS. Union of India*[13], held that Article 341 makes it clear that a 'scheduled castes' need not be a 'caste' in the conventional sense and, therefore, may not be a caste within the meaning of Article 15(4) or 16(4). Scheduled castes become such only if the President specifies any caste, race, tribe or parts or groups within castes, race or tribes for the purpose of the Constitution. So, a group or a section of a group, which need not be a caste and may even be a hotch-potch of many castes or tribes or even races, may still be a scheduled caste under Article 341. It has been held by the Supreme Court in *Triloki Nath vs. state of Jammu & Kashmir*[14], that the State has, no doubt, to ascertain whether a particular class of citizens is backward or not, having regard to acceptable criteria, it is not the final word on the question. It is a justiciable issue and may be canvassed if that decision is based on the irrelevant considerations.[15]

The Supreme Court then finally held that in reservation of appointments for backward classes, determination of backward classes, could not be on the basis of community, caste, race or religion. The Supreme Court thus held that state policy of distribution of posts community-wise was hit by Articles 16(1) and (4). For the application of clause (4), two conditions must be satisfied :

(i) a class of citizens is socially and educationally backward; and

(ii) the said class is not adequately represented in the service under the state.[16]

Besides the scheduled castes and the scheduled tribes, the Constitution extended some protection to backward classes, as these classes have been neglected for long. Backward classes are to be found amongst all religious groups- Hindus, Muslims, Christians, etc. Under Article 15(4), the state is empowered to make special provisions for the advancement of any socially and educationally backward class besides the scheduled castes and the scheduled tribes. Under Article 16(4), there can be reservation of posts for backward classes. The backward classes have not been specified in the Constitution for, at the time of the Constitution- making, not much information was available about them. In Articles 15(4) and 340, the expression used is socially and educationally backward classes. In Article 16(4), the expression used is 'backward' and in Article 46, the term used is 'weaker sections of the people'. To facilitate the task of identifying the backward classes and laying down criteria for the purpose, Article 340(1) empowers the President to appoint a commission consisting of such person as he thinks fit to investigate the condition of socially and educationally backward classes in India and the difficulties which they face. The Commission may recommend steps for improving their condition. The Commission may also make recommendation as to the grants which should be made for the purpose by the Centre or any State, and the conditions subject to which such grants should be made. The Presidential order is to define the procedure to be followed by the Commission. The Commission is to investigate the matters referred to it and present its report to the President setting out the facts as found by it and making its

recommendations. The report of the Commission together with a memorandum setting out the action taken thereon by the government is to be laid before each House of Parliament. After the receipt of the Commission's report, the President may by order specify the backward classes which shall fall within the jurisdiction of the special officer for the scheduled castes and the scheduled tribes.

The task of devising positive and workable criteria to identify backwardness on an all India basis is yet to be completed. At present, each state has its own criterion for determining backwardness and often political expediency plays a decisive role. There is, thus, no uniformity in the country in this respect. For purpose of Article 15(4) and 16(4), it is for the state concerned to list the backward classes. The Centre can also list them for purposes of admission to central educational institutions and central services and also under Article 338(3) for bringing them under the jurisdiction of the Commissioner for Scheduled Castes and Scheduled Tribes. Even in this the Centre has not been able to do much. The task is an extremely difficult one. Many communities desire to be characterized as backward because of the benefits attached to them and it is here that the entire matter gets politicised.[17]

The Government of India appointed the Backward Classes Commission (known as the Mandal Commission) under Article 340 on January 1, 1979. The Commission submitted its report on 31st December 1980. The Commission was *inter alia* "entrusted with the task of determining the criteria for defining the socially and educationally backward classes in the country". The Commission has held that (besides Scheduled Castes and Backward classes who amount to 22.56% of the total

population), 52% of the total Indian population can be characterized as backward and, therefore, 52% of all posts could be reserved for them. The Commission, however, refrained from making such a drastic recommendation in view of the Supreme Court's ruling that the total quantum of reservation under Article 16(4) should be below 50%.[18] In view of this legal constraint, the Commission was obliged to recommend reservation of 27% only for backward classes so that the total reservation for Scheduled Castes and backward classes amounts to a little less than 50%. The Commission by and large identified castes with backward classes and more or less entirely ignored the economic tests. The Commission also ignored the fact that even among the so-called higher castes, there may be a number of socially and educationally backward people deserving help. On the whole, the Commission's recommendation have proved to be very controversial.[19] According to Justice Subba Rao, "Casteism has been projected into every walk of life-admissions to educational institutions, appointment to Government services, contracts, licences, elections and the formation of Ministry".[20]

The whole controversy regarding Government reservation policy revolves around as to who should be the real beneficiaries of the policy and extent to which the reservations can be stretched. There have been several decisions of the Supreme Court since 1951, which tried to analyse the criteria to be adopted for making reservations for the backward classes. In the case of *State of Madras vs. Smt. Champakam Dorairajan and Another*[21] the issue was discussed in detail by the Supreme Court. The State of Madras maintains four Medical Colleges with 330 seats, out of which 17 seats are reserved for students coming

from outside the state and 12 seats are reserved for discretionary allotment by the state and the remaining seats are distributed among the four districts in the State. Likewise, the state of Madras maintains four engineering college with a capacity of 395 seats. Out of which, 21 seats are reserved for students coming from outside the state, 12 seats are reserved for discretionary allotment by the state and the remaining seats are distributed among the four districts of the state.

For many years before the commencement of the Constitution, the seats in both the Medical Colleges and the Engineering Colleges so apportioned among the four distinct groups of districts used to be filled up according to certain proportions set forth in what used to be called the communal G.O. Thus, for every 14 seats to be filled by the selection committee, candidates used to be selected strictly on the basis of: Non-Brahmins (Hindus)6, Backward Hindus 2, Brahmins 2, Harijans 2, Anglo-India & Indian Christians 1, Muslims 1.

Smt. Champakam Dorairajan prayed for the issue of a *writ of Mandamus* or other suitable prerogative writ restraining the state of Madras and all officers and subordinates thereof from enforcing, observing, maintaining or following or requiring the enforcement, observance, maintenance or following by the authorities concerned of the notification or the Order generally referred to as the Communal Government Order in and by which admission to the Madras Medical College, were sought or purported to be regulated in such manner as to infringe and involve the violation of her fundamental rights. From the affidavit filed in support of her petition it does not appear that the petitioner had actually applied for admission to the Medical College. She states that on inquiry she came to

know that she would not be admitted to the college as she belonged to the Brahmin community. No objection, however, was taken to the maintainability of her petition on the ground of absence of any actual application for admission made by her. On the contrary, Court have been told that the state had agreed to reserve a seat for her should her application before the High Court succeed. In the peculiar circumstances, Court do not consider it necessary to pursue this matter any further.[22]

Sri Srinivasan who had actually applied for admission to the Government Engineering College at Guindy, filed a petition praying for a *writ of Mandamus*, or any other writ restraining the state of Madras and all officers thereof from enforcing, observing, maintaining or following the communal government order by which admission to the Engineering College was sought to be regulated in such manner as to infringe and involve the violation of the fundamental right of the petitioner under Article 15(1) and Article 29(2) of the Constitution. In the affidavit filed in support of his petition, the petitioner has stated that he had passed the Intermediate examination held in March 1950 in Group I, passing the said examination in first class and obtaining marks set out in his affidavit. The Advocate General appearing for the State contends that the provisions of this Article have to be read along with other Articles in the Constitution. And that Article 46 charges the state with promoting with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes, and with protecting them from social injustice and all forms of exploitation. It is pointed out that although this Article finds a place in part IV of the Constitution which lays down

certain Directive Principles of State policy and though the provisions contained in that part are not enforceable by any court of law the principle therein laid down are nevertheless fundamental in the governance of the country and Article 37 makes it obligatory on the part of the state to apply those principles while making laws. The argument is that having regard to the provisions of Article 46, the State is entitled to maintain the communal government order fixing proportionate seats for different communities and if because of that order, which is thus contended to be valid in law and not in violation of the Constitution, the petitioners are unable to get admissions to the educational institutions there is no infringement of their fundamental rights. The chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any legislative or Executive act or order, except to the extent provided in the appropriate Article in Part III. The Directive Principles of state policy have to conform to and run as subsidiary to the chapter on Fundamental Rights.[23]

Take the case of the petitioner Srinivasan. It is not disputed that he secured much higher marks than those of Non-Brahmin candidates and yet the Non-Brahmin candidates who secured less number of marks will be admitted into six out of every 14 seats but the petitioner Srinivasan will not be admitted to any of them. It is argued that the petitioners are not denied admission only because they are Brahmins but for a variety of reasons, e.g. (a) they are Brahmins, (b) Brahmins have an allotment of only two seats out of 14 and (c) the two seats have already been filled up by the most meritorious Brahmin candidates. The classification in the communal government order proceeds on the basis of religion, race and caste. In the view of Judges, the classification made in the communal

government order is opposed to the Constitution and constitutes a clear violation of the Fundamental Rights guaranteed to the citizen under Article 29(2). And there is no need to consider the effect of Article 14 or 15 on the specific Articles discussed above. The communal government order is therefore inconsistent with the provisions of Article 29(2) in part III of the Constitution and is void under Article 13. The appeals were dismissed with costs.[24]

This may be true that only two seats are reserved for Brahmins. But when we come to consider the seats reserved for the candidates of other communities, the petitioners are denied admission to any of then not on any ground other then the sole ground of their being Brahmins and not being members of the community for whom those reservations have been made.

It was this positive attitude, which convinced the honourable judges to observe that part III is sacrosanct and Directive Principles of State Policy must conform to and run subsidiary to fundamental rights. There is no doubt that fundamental rights as mentioned in part III of the Constitution are very important but at the same time one can not neglect the value of Directive Principles of State Policy which enshrine the aspirations of people of the country. As a result, any strict positive interpretation of fundamental rights *vis-a-vis* directive principles might result in the frustration of the philosophical foundations of both Part III and part IV of the Constitution. Instead if a liberal pragmatic rule of interpretation is applied to these parts that may yield fruitful results which unfortunately the honourable judges failed to adopt in this case.

Although the method of interpretation of various Constitutional provisions, in this case, is not convincing but the result of the interpretation is quite convincing. Politicization of reservation is a dangerous sign for a society already fragmented on various grounds. The court took into consideration not only Constitutional provisions touching upon the issue of reservation but also considered socio-economic factors involved in the case.

In *M.R. Balaji and Others vs. The State of Mysore and Others*[25] the state appointed a Committee called the Mysore Backward Classes Committee with Dr. R. Nagen Gowda as its chairman to investigate the problem and advise the government as to the criteria which should be adopted in determining the educationally and socially backward classes, and the special provisions which should be made for their advancement. According to the order, which was passed in the light of interim report that 60% of the seats were left open for what may be conveniently described as the "merit pool" available to candidates according to their merits, 40% were reserved for the reservation pool 22% of which were reserved for the backward classes, 15% for the scheduled castes and 3% for the scheduled tribes.

The Nagan Gowda Committee submitted its report in 1961 and in the light of the said report and the recommendation made therein, the state proceeded to make an order under Article 15(4) on the 10th July 1961. This order begins with the observation that the Nagan Gowda Committee has come to the conclusion that in the present circumstances, the only practicable method of classifying the backward classes in the state is on the basis of castes and communities, and it has specified the

criteria which should be adopted for determining the educational and social backwardness of the communities.

Out of the twenty-three petitioners, six had applied for admission to the pre-professional class in medicine in the Medical Colleges affiliated either to the Mysore university or to the Karnataka university and seventeen had applied for admission to the First Year of 5-year integrated course leading to the degree of B.E. of the University of Mysore. As a result of reservation made by the said order, students who have had secured less percentage of marks were admitted, but not the petitioners. The petitioner's case is that the impugned over which has been passed under Article 15(4) is not valid because the basis adopted by the order in specifying and enumerating the socially and educationally backward classes of citizens in the State is unintelligible and irrational and the classification made on the said basis is inconsistent with and outside the provisions of Article 15(4).[26]

In the opinion of learned judges, when the state makes special provision for the advancement of the weaker sections of society specified in Article 15(4) it has to approach its task objectively and in a rational manner. Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighed, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations. Therefore we are satisfied that the reservation of 68% directed by the impugned order is plainly inconsistent with Article 15(4).[27]

The Supreme Court laid down several important points in this judgment. It held that it was not necessary for the government to appoint a Commission under Article 340 before passing an order under Article 15(4). This appointment and report of the Backward Classes Commission was only recommendatory. It was not a condition precedent for taking action under Article 15(4). It was further ruled that the executive can pass orders on reservation. It is not necessary for the legislature to make provision for reservation. The backwardness must be social and educational. Caste is one indicator, but its role cannot be exaggerated. Otherwise, it would perpetuate caste. Social backwardness is the result of poverty to a large extent. Occupations and place of habitation also determine backwardness.

Classification between backward and more backward classes made by the government was held to be unconstitutional. According to this criterion, nearly 90 percent of the state population became backward. Reservation of 68 percent was also inconsistent with Article 15(4) as it was unreasonable. The interests of the weaker sections must be balanced with that of the society in general. It is a difficult task but in the guise of making special provision, practically all seats cannot be reserved. Reservation should be less than 50 percent. The Court concluded that the state government's order was a fraud on the Constitutional power conferred under Article 15(4). The court said that it was not its task to categorize the valid and invalid percentage. Article 15(4) gives that discretion to the state government.[28]

The judgment of honourable Supreme Court through learned judges like P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das, Gupta, J.C. Shah and

the then Chief justice of India B.P. Sinha, in the present case, is one of the finest judgments in relation to reservation and related issues.

The most notable observation of the Supreme Court in this case relates to its ruling that the reservation of 68% made by the impugned Mysore Government is a fraud on the Constitutional provisions relating to reservational provisions that the makers of our Constitution never intended that the special provisions ingrained in Article 15(4) , 16(4) should be used in such a manner as to frustrate the most fundamental of all fundamental rights, that is, right to equality. 68% reservation is nothing but a naked misuse of special provisions to uplift the backward sections of the society. The Court further held that there can not be classification within classification so as to confuse the entire concept of backwardness. Again the backwardness as given in Article 15(4) and 16(4) does not mean either socially or educationally rather it must be both social and educational backwardness so as to claim benefits of Article 15(4). This interpretation given by the honourable Apex Court is very convincing and acts as a rider against the irrational attitude of politicians' vis-à-vis reservations. Moreover, the Court's observation that caste is a relevant factor under Article 15(4) but it can't be the sole test for ascertaining whether a particular class is backward. Other factors like poverty, occupation, place of habitation are equally relevant. The Court rightly observed that Article 15(4) does not speak of "castes" but only speaks of "classes", and 'caste' and class is not synonymous. Since the impugned government order solely relied on 'caste' without regard to other relevant factors and that is sufficient to render the order invalid. Furthermore, the observations of learned judges with regard to irrational criterion adopted by the state government which rendered about 90% of

the population as backward is inconsistent with Article 15(4) is highly appreciating. The court noted that Article 15(4) only enables the state to make special and not exclusive provision for the backward classes. The court's observation that national interest would suffer if qualified and competent students were excluded from admission in institutions of higher education is an excellent analysis of an uncontrolled and irrational reservation policy.

R. Chitralekha and another vs. State of Mysore and Others[29], the Government of Mysore by an Order defined backward classes and directed that 30 per cent of the seats in professional and technical colleges and institutions shall be reserved for them and 18 per cent to the scheduled caste and scheduled tribes. It was said that classification of socially and educationally backward classes should be made on the basis of economic condition and occupation. By a letter the Government informed the Director of Technical Education that it had been decided that 25% of the maximum marks for the examination in optional subject should be fixed as interview marks. The selection will be decided by a committee composed of Heads of Technical Institutions and in allotting marks for interview factors like general knowledge, personality and extra-curricular activities of the candidates should be taken into consideration. On the basis of this selections were made for admission to Engineering and Medical Colleges. Thereupon some of the candidates whose applications for admission were rejected filed writ petitions before the High Court of Mysore for quashing the orders issued by the Government and for directing that they shall be admitted to the college strictly in the order of merit. The High Court rejected the contentions raised on points of law but held that the petitioners be interviewed afresh

and admissions be made in accordance with the Government Order and letter which were declared valid.

It was also contended that the Government letter was invalid in as much as it did not comply with the provision of Article 166 of the Constitution. The Government had no power to appoint a selection committee for admitting students to colleges on the basis of higher or different qualifications than those prescribed by the University. That selection by viva voce examination was illegal by reason of the fact that it enables the interviewers to act arbitrarily and therefore it contravenes Article 14 of the Constitution. Lastly it was contended that unless the observation of the High Court that the classification was not perfect since the Government has not applied the caste and economic criterion, it will mislead the Government.

The Government laid down that classification of socially and educationally backward classes should be made on the following basis :(1) economic condition, and (ii) occupation. According to that order a family whose income is Rs. 1,200 per annum or less and persons or classes following occupations of agriculture, petty business, inferior services, crafts or other occupations involving manual labour are in general, socially, economically and educationally backward. The Government lists the following occupations as contributing to social backwardness: (1) actual cultivator, (2) artisan (3) petty businessmen, (4) inferior services (i.e. class IV in government services and corresponding class or service in private employment) including casual labour, and (5) any other occupation involving manual labour. The order does not take into consideration the caste of an applicant as one of the

criteria for backwardness. Learned counsel does not attack the validity of the said order.

According to Subba Rao J, we do not intend to lay down any inflexible rule for the Government to follow. The laying down of criteria for ascertainment of social and educational backwardness of a class is a complex problem depending upon many circumstances which may vary from state to state and even from place to place in a State. But what we intend to emphasize is that under no circumstances a "class" can be equated to a "caste", though the caste of an individual or a group of individuals may be considered along with other relevant factors in putting him in a particular class. We would also like to make it clear that if in a given situation caste is excluded in ascertaining a class within the meaning of Article 15(4) of the Constitution, it does not vitiate the classification if it satisfied other tests.[30]

According to Mudholkar J that it would not be in accordance either with clause (1) of the Article 15 or clause (2) of Article 29 to require the consideration of the castes of persons to be borne in mind for determining what are socially and educationally backward classes. It is true that clause (4) of Article 15 contains a non-obstinate clause with the result that power conferred by that clause can be exercised despite the provision of clause (1) of Article 15 and clause (2) of Article 29. But that does not justify the inference that castes have any relevance in determining what are socially and educationally backward communities. That the Constitution has used in clause (4) the expression "classes" and not "castes".

The Supreme Court dismissed the appeal. The judgment asserted that caste was only a relevant circumstance and it could not be a dominant test in ascertaining the backwardness of a class of citizens. Backwardness could be ascertained without reference to caste. If the government does not take caste into consideration, its order will not be bad.[31]

In fact, the judgment of the Honourable Supreme Court on almost all points, in this case, is quite satisfactory. The court's observation that provisions of Article 166 of the Constitution are only directory and not mandatory is very clear from the reading of the said Article. Since the government issued the impugned order to the effect mentioned there in, it does not contravene the requirements of Article 166. Secondly, the mere fact that selection by viva-voce could be abused does not directly violate Article 14. It could be violative of that provision only when it is shown, in a particular case, that the method was actually misused by the authorities. Again the Court's observation that classification of backwardness on the basis of economic conditions and occupation is not bad and does not offend Article 15(4), is well-founded. The caste of a group may be relevant circumstance in ascertaining backwardness but can not be the sole criterion, is appreciable.

S. Periakaruppan vs. State of Tamil Nadu[32], the petitioners before the court appear to have had brilliant academic career. The petitioner in petition No. 285 of 1970 came out within first three ranks in the 10th and 11th standards and in the final examination he secured 451 marks out of the total of 700 he stood third in his school. He has a N.C.C. cadet and passed creditably the 'A' certificate examination. After having

passed his Anglo Indian High School examination creditably he joined Madurai College in the Pre-University course taking Physics, Chemistry and Biology subjects. In that course he secured first class with Grade 'D' plus in Physics and Chemistry and 'A' plus in Biology. He stood fourth in his college. The Grade 'D' plus implies 85 to 99 percent marks and 'A' plus 65 to 75 percent marks.

The petitioners before the court challenged the validity of the selections made on various grounds. They contended that the unitwise selection contravenes Articles 14 and 15 of the Constitution in as much as the same places the applicants of some of the units in a better position than those who applied to other units. It was alleged that the ratio between applicants and number of seats in the Coimbatore unit was 1:13; in Tirunelveli 1:10; in Thanjavur 1:6 and in Madurai 1:7 1/2. It was further alleged that several applicants who secured lesser marks than the petitioner's court were selected merely because their application came to be considered in other units. It was also alleged that this unitwise scheme were merely intended as a device to get over the decision of this court in *Rajendran's case.*[33] It was next contended on behalf of the petitioners that the interview held was a farce. Each applicant was interviewed hardly for three minutes. During that interview irrelevant questions were asked. The interview marks were manipulated so as to pull up undeserving applicants and down grade those who had scored excellent marks in their pre-university examination. It was said that a perusal of the marks list would show that the whole selection was a manipulation. The applicants who had failed more than once and ultimately secured bare second class were selected while applicants who had secured first class with high marks were rejected. It was urged on

their behalf that even the students who get the minimum marks could be pulled up by the selection committee by plumping 70 or more out of 75 interview marks whereas the students who have secured 170 marks the highest marks that could have been secured under the admission rules in pre-University examination could be pulled down by giving less than 10 marks out of 75. The petitioner's complaint is that after the interview the selection committee carried the marks given by them to Madras and there the Government has manipulated the marks in such a way as to select their favourites and reject such of them in whom the Government is not interested.

In *Rajendran's case*[34] it was held that the classification of backward classes on the basis of castes is within the purview of Article 15(4) if those castes are shown to be socially and educationally backward. The court further observed that there is no gainsaying the fact that there are numerous castes in this country, which are socially and educationally backward and to ignore their existence is to ignore the facts of life. Hence it is not possible to uphold the contention that the impugned reservation is not in accordance with Article 15(4). But all the same the government should not proceed as the basis that once a class is considered as a backward class it should continue to be backward class for all times. Such an approach would defeat the very purpose of the reservation because once a class reaches a stage of progress which some modern writers call as take off stage then competition is necessary for their future progress. The Government should always keep under review the question of reservation of seats and only the classes which are really socially and educationally backward should be allowed to have the benefit of reservation. Reservation of seats should not be allowed to

become a vested interest. The fact that candidates of backward classes have secured about 50% of the seats in the general pool does not show that the time has come for a *de novo* comprehensive examination of the question. It must be remembered that the Governments' decision in this regard is open to judicial review.[35] The State of Tamil Nadu shall immediately constitute a separate expert committee consisting of eminent medical practitioners (excluding all those who were members of the previous committees) for selection to the 24 unfilled seats. The selection shall be made on statewise basis. The committee shall interview only the candidates who are shown in the waiting list, the persons who unsuccessfully moved the High Court of Madras and the two petitioners before this court. They shall allot separate marks under the five heads mentioned in the rule. The committee shall take into consideration only matters laid down in the rule, exclude from consideration all irrelevant matters and thereafter prepare a gradation list to fill up the 24 seats mentioned earlier. It is ordered accordingly. Again, in *Pradeep Jain etc. vs. Union of India and Other*[36], a group of writ petitions, the question, whether, consistently with the Constitutional values admissions to a medical college or any other institution of higher learning situated in a state can be confined to those who have domiciled within the state or who are resident within the state for a specified number of years or can any reservation in admissions be made for them so as to give them precedence over those who do not possess "domicile" or residential qualification within the State, irrespective of merit. This question has assumed considerable significance in the present day context, because we find that today the integrity of the nation is

threatened by the divisive force of regionalism, linguism, communalism and regional linguistic.

In the view of court that so far as admissions to post-graduate courses, such as M.S., M.D. and the like are concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the state or on institutional preference. But having regard to broader considerations of equality of opportunity and institutional continuity in education which has its own importance and value, the Court directed that though residence requirement within the state shall not be a ground for reservation in admissions to post-graduate courses, a certain percentage of seats may in the present circumstances, be reserved on the basis of institutional preference in the sense that a student who has passed MBBS course from a medical college or university, may be given preference for admission to the post-graduate course in the same medical or university but such reservation on the basis of institutional preference should not in any event exceed 50 percent of the total number of open seats available for admission to the post-graduate course.

In *R. Uma Devi vs. The Principal, Kurnool Medical College, Kurnool and Others*[37], where the petitioner was born in forward community was admitted to M.B.B.S. course under the open category, her marriage subsequently with a person belonging to backward community would change her social status and her admission to post-graduate class under reserved quota would not be cancelled on ground that she belonged to open category specially when there were no allegation that her marriage was a mock marriage. The petitioner though a Vysya by birth and was

admitted to M.B.B.S. course under open category when she was not married, but her marriage to a person belonging to Besta (Fisermen) community which is a backward class 'A' category has sought for admission into Post-Graduate Medical course (D.G.H.) mentioning her social status as backward class 'A' category as that of her husband and the same was granted and she had also paid the necessary fee in that regard. The petitioner had secured 153 marks and was assigned 67th rank. She did not conceal facts and has stated that she is a backward class after admission by proceeding dated 1.7.92 she was issued with a notice proposing to cancel her selection on the ground that she belongs to open category on the basis of her father's caste and does not belong to backward class 'A' category, even though her husband is from backward class 'A' category. Hindu marriage is not an agreement. It is a '*Sanaskara*' and is a sacrament and therefore, after marriage, the wife passes into the dominion of her husband. She goes and stays with her husband and he becomes her custodialegis. After her marriage, she no longer a member of her parents family and becomes part and parcel of her husband's family. Husband's entitlement requiring his wife to live in his house from the moment of the marriage is well recognized under Hindu law. A wife cannot refuse this obligation. This wife, a Binnagotri at the time of marriage, enters into her husband's 'gotra' on her marriage and becomes a 'sagori' of her husband, as she is treated as part and parcel of her husband. The Supreme Court rejected the stand taken by the respondents herein and accepted the contention of the petitioner that after marriage, she comes within the fold of her husband.

K. Duraisamy and another vs. State of Tamil Nadu and Others[38], an appeal was filed against the decision of the Full Bench of the Madras

High Court in *R. Murali vs. R. Kamalakkannan*[39] dated 1-10-1999 in writ Appeal No. 929/99. The Government of Tamil Nadu, Health and Family Welfare Department issued an order Ms No. 55 dated 9-2-1999 laying down the procedure for selection of candidates for admission to Post-graduate Diploma, Degree, Higher Specialty courses for the academic session 1999-2000. The Government Order envisaged reservation upto 50% in favour of in-service candidates on merit basis and further stipulated that 50% of the seats available in each of the specialty, shall be allotted executively to service candidates. According to the applicant that they were not selected due to a particular understanding of the orders of the government and stipulations contains in the prospectus relating to earmarking or allocation of seats for in-service candidates and non-service candidates in a manner by which the claims of in-service candidates based on merit on the basis of marks came to be ignored in respect of 50% of the seats allocated as "Open Quata" by confining them exclusively to non-service candidates and considering claims of in-service candidates like the appellants only in respect of 50% allocated to and reserved for service candidates.[40]

As the number of candidates seeking admission to colleges far exceeds the number of seats available, the validity of orders passed by Government reserving seats for Scheduled Castes, Scheduled Tribes and Backward classes in engineering, medical and other colleges providing technical education has been considered in a number of cases after clause (4) had been inserted in Article 15. The Supreme Court considered Article 15(4) in *M.R. Balaji vs. Mysore*[41], *Heggade Janardhan Subbarye vs. Mysore*[42] and *R. Chitralekha vs. Mysore*[43], which must be read together as the second case "clarified" the first and

the third "explained" a part of it. In Balaji's case the Order of the Mysore government reserving seats was the fifth Order impugned in court. The questions that were raised were of extreme importance, for it involved the interpretation of Article 15(1), Article 29(2) and Article 46. It was not however, disputed that these Articles justified a reservation of seats for the Scheduled Castes, Scheduled Tribes and for backward classes, the dispute was about the extent of such special provision, and the criterion for identifying these classes. The impugned order was based on the report of the Nagan Gowda Committee, and the judgment in Balaji's case considered that report, and other reports, dealing with backward classes and the reservation to be made for them in education institutions. However, the court first dealt with certain preliminary contentions and rejected them.[44]

The General Manager, Southern Railway vs. Rangachari[45], on a writ petition filed by the respondent K. Rangachari in the Madras High Court under Article 226 of the Constitution a *writ of madamus* was issued restraining the appellants, the General Manager, Southern Railways, and the Personnel Officer (Reservation), Southern Railway, from giving effect to the directions of the Railway Board ordering reservation of selection posts in Class III of the railway service in favour of the members of the Scheduled Castes and Backward classes and in particular the reservation of selection posts among the Court-Inspectors in class III are of which is held by the respondent. After the writ was thus issued the appellant applied for and obtained a certificate from the said High Court under Article 132(1) of the Constitution as it involved a substantial question of law, namely, the scope of Article 16(4) of the Constitution.

The respondent was initially recruited to the grade of Rs. 200-300 and was confirmed in that grade on November 21, 1956. He was promoted to officiate in the grade of Rs. 260-350. He got a chance of another similar promotion to officiate on April 8, 1959. These promotions were purely adhoc and temporary. Later, on June 16, 1959, he was interviewed by the selection committee and his promotion to the said higher grade was regularized and an order was passed in that behalf on June 30, 1959. By this order he was allowed to continue to officiate in the said grade. Since then he has been officiating in that grade. On April 27, 1959 and on June 12, 1959, the impugned circulars were issued by the Railway Board and addressed to the General Managers. As a result of the said circulars the selection committee decided to consider the case of Hiriyanna for promotion to the grade of Rs. 260-350.

According to the respondent the two directives issued by the appellants under the two impugned circulars were *ultra vires*, illegal, inoperative and unconstitutional in that they were not justified by Article 16(4). He alleged that a reading of Articles 16, 335, 338 and 339 would show that the Constitution draws a clear distinction between scheduled castes or tribes on the one hand and backward classes on the other and so it was urged by him that the impugned circulars were illegal. The petitioner further urged that the safeguards provided by Article 16(4) applied only to reservation of posts at the stage of appointment and not for reservation of posts for promotion after appointment and so the circulars were outside the provisions of Article 16(4) and as such contravened Article 16(1). The petition expressed the apprehension that if the circulars are implemented the respondent would be reverted and that would cause great loss both financially and in status to him. It is on

these grounds that the respondent prayed for the issue of a writ of *mandamus* directing the appellants to forbear from implementing the two impugned circulars.

The first question to be considered is whether Article 16(1) and (2) refer to promotion or whether they are confined to the initial appointment to any post in civil service. The appellants and the respondent both conceded that cases of promotion fell within Articles 16(1) and (2) though they differed as to whether they were included in Article 16(4). It would be immediately noticed that the respondent's petition postulates the inclusion of promotion in Articles 16(1) and (2) for it is on that assumption that he challenges the validity of the impugned circulars.

According to Gajendragadkar J. it is true that in providing for the reservation under Article 16(4) the State has to take into consideration the claims of the members of the backward classes consistently with the maintenance of the efficiency of administration. It must not be forgotten that the efficiency of administration is of such paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration. Reservation of appointments or posts may theoretically and conceivably mean some impairment of efficiency; but the risk involved in sacrificing efficiency of administration must always be borne in mind when any state sets about making a provision for reservation of appointment or posts. It is also true that the reservation which can be made under Article 16(4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. In

exercising the powers under Article 16(4) the problem of adequate representation of the backward class of citizens must be fairly and objectively considered and an attempt must always be made to strike a reasonable balance between the claims of backward classes and the claims of other employees as well as the important consideration of the efficiency of administration; but, in the present case, as we have already seen, the challenge to the validity of the impugned circulars is based on the assumption that the said circulars are outside Article 16(4) because the posts referred so in the said Article are posts outside the cadre of services and in any case, do not include selection posts. Since, in our opinion, this assumption is not well founded we must hold that the impugned circulars are not unconstitutional. The decision of the High Court under appeal is reversed and the respondent's application for a writ is dismissed.[46]

The Honourable High Court of Madras rightly held that the word "backward classes" in Article 16(4) included members of Scheduled Castes and Backward classes but the word "appointments" did not denote promotion and the word "posts" meant posts outside the civil services and thus the impugned circulars of the Railways were not covered by Article 16(4) and were ultra-virus. It is, indeed, important to note here that the special provisions made in matters of public employment for the "Backward classes" in Article 16(4) must be interpreted in the light of Article 16(1) of the Constitution. Any interpretation made in isolation could defeat the very object of this provision.

It is correct that Constitutional provisions must not be interpreted in a narrow or pedantic manner (as observed by honourable Justice Gajendragadkar in this case). Yet it is also very important that one must not forget the dangers involved in highly liberal interpretation because that can defeat the very purpose of the Constitution in relation to a specific aspect. Reservation benefits must, therefore, extend only at the initial stage (at the time of appointment) and thereafter it should be left to the merit of the persons concerned at the stages of promotions. Reservation after reservation would adversely affect the meritorious members and hence could be harmful for the nation as a whole in the long run.

On the basis of above-mentioned points, it is submitted that the observations of Mr. Justice Wanchoo and Mr. Justice Ayyangar are far more satisfactory than the other Judges involved in this case. Moreover, it is the stand of the Honourable High Court and the minority opinion in the Supreme Court which was approved by an eleven judges Bench of Supreme Court in Indira Swahany case around 30 years after this judgment.

Triloki Nath Tiku and another vs. State of Jammu and Kashmir and Other[47], the injunction to the secretaries to select candidates "keeping in view the policy of adequate representation of such elements as were not adequately represented in the services", is not a provision making reservation of appointments or posts in favour of backward class. Selections made in pursuance of such order could not be deemed to have been made on the basis of backwardness of the classes to which they belonged. The policy of the state of Jammu & Kashmir whereby 50

percent of vacancies were reserved for the Muslim of Kashmir for the entire state, 40 per cent were reserved for Jammu Hindu and 10 per cent were reserved for Kashmiri Hindus, is a policy not of reservation of some appointments or posts. It is a scheme of distribution of all the posts community-wise. Distribution of appointments, posts or promotions made in implementation of that state policy is contrary to the Constitutional guarantee under Articles 16(1) and (2) and is not saved by clause (4) and the promotions granted in accordance with this policy are contrary to the provisions of Articles 16(1) and (4) of the Constitution and therefore void. This will not however prevent the state from devising a scheme, consistent with the Constitutional guarantees, for reservation of appointments, posts or promotions in favour of any backward class of citizens which in the opinion of the state is not adequately represented in the services under the state.

The petitioners claimed that they had been discriminated against in the matter of promotion to the gazetted cadre, solely on the ground of religion and place of residence. The case that junior officers were promoted to the gazetted cadre over officers senior to them on the ground solely that they belonged to the Muslim community or that they were Hindus belonging to the Jammu province of the sate of Jammu and Kashmir. But the prejudicial treatment of senior officers was sought to be supported on the plea that the state had acted in consonance with the principles of clause (4) of Article 16 of the Constitution. It was the case of the state that Muslims as a community in the whole of the state of Jammu and Kashmir formed a backward class of citizens and they were not adequately represented in the services under the state: so are the Hindus from the province of Jammu and on that clause (4) of Article 16

undoubtedly empowers the state to make reservation in favour of any backward class of citizens so as to provide them adequate representation in the services under the state. The provision making such reservation need not be by a statutory enactment: it may be made by an executive order or direction. But there is not even a formal executive order expressly dealing with reservation of posts and appointment in the Education Department. On behalf of the state, it is claimed that as a matter of state policy, in making appointments and promotions, reservations in fact have been made by the state as alleged by the petitioners with some variations as to percentage reserved for the Hindus from the province of Jammu.

But for the purpose of Article 16(4) in determining whether a section forms a class, a test solely based on caste, community, race, religion, sex, descent, place of birth or residence cannot be adopted, because it would directly offend the Constitution. The promotions granted to respondents are accordingly declared contrary to the provisions of Articles 16(1) and (4) of the Constitution and therefore void. This will not however prevent the State from devising a scheme, consistent with the Constitutional guarantees, for reservation of appointments, posts or promotions in favour of any backward class of citizens which in the opinion of the state is not adequately represented in the services under the state.[48]

The Supreme Court rejected the argument of the government that under Article 16(4), "backward classes" are those not adequately represented in public services. If that stand was accepted however advanced a class may be educationally and socially, if it was not represented adequately

in the services, it was a backward class. This theory would exclude the really backward classes from the benefit of reservation. Therefore, the court asserted two conditions for valid reservation: (1) the class of citizens must be socially and educationally backward and (2) it is not adequately represented in the services.[49]

But some important questions left unanswered by Apex Court in this case that if a considerable section of a particular community is socially and educationally backward, would reservation for members of such a community or a part of it, not Constitutionally required within the meaning of Article16 ? Would a denial of reservation benefits to the members of such community on the basis of their religion, not frustrate the purpose of Article 16? Include a section of Kashmiri Muslims? It seems that the court, in this case, has laid a lot of emphasis upon the 'religion' of the backward class and not their backwardness which is the main criterion for deciding whether a group of persons deserve reservation under Article16 or not? However, a noticeable point, in this case, was that there was no executive order expressly dealing with reservation of posts and appointments in the Education Department. The absence of either a statutory enactment or a formal executive order by the state is a serious omission on the part of State Government which provided sufficient space for striking down the order of State Government.

State of Kerala and another vs. N.M. Thomas and Others[50], the respondent alleged in the writ petition that 12 lower division clerks who were members of Scheduled Castes and Backward classes were promoted without test qualification. The further allegation is that by an

order dated 15 June, 1972, 19 lower division clerks belonging to scheduled castes and tribes were promoted as upper division clerks of which 5 were unqualified Scheduled Caste and Backward classes members and 14 were qualified Scheduled Castes and Backward classes members. By order dated 19 September, 1972, another 8 promotions of members of scheduled castes and tribes were ordered of which only two were qualified and the remaining six were unqualified. By another order dater 31 October, 1972, 7 Scheduled Castes and Backward classes members were promoted without qualifying test and one was promoted with the qualifying test. The grievance of the respondent-petitioner before the High Court was that out of 51 vacancies which arose in the category of upper division clerks in the year 1972, 34 were filled up by scheduled castes member who did not possess qualifications and only 17 were given to qualified persons.

The respondent is a lower division clerk working in the registration department. For promotion to upper division clerk in that department on the basis of seniority, the lower division clerks have to pass (1) account test (lower), (2) Kerala registration test and (3) test in the manual of office procedure. The respondent's grievance is that in view of certain concessions given to members of Scheduled Castes and Scheduled Tribes, they were able to obtain promotions earlier than the respondent, though the members of the scheduled caste and Backward classes who were promoted had not passed the tests. The important question before the Honourable Apex Court was whether it was permissible to give preferential treatment to Scheduled Castes and Backward classes under Clause (1) of Article 16, that is, outside the exception clause (4) of Article 16?

The judgment in the light of relevant Kerala Services Rules as well as the analysis of clause (1) and (4) of Article 16 of the Constitution seems to be extremely convincing. It rightly held that the interpretation of Constitutional provisions should not be interpreted in any narrow or pedantic manner as that would defeat the Constitutional purpose. That there can be reasonable classification of the employees in matters relating to employment or appointment under Article 16 of the Constitution. Article 16(1) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. The court rightly observed that the purpose enshrined in Article 16(4) can't be fulfilled if it is not given effect to at the stage of promotions because denying the same would mean bringing a disadvantaged person or section only one step forward and then denial for any other step ahead frustrating the whole purpose of socio-economic upliftment. Again it stated that the classification of employees belonging to Scheduled Castes and Backward classes for allowing them an extended period of 2 years for passing the special tests for promotion is a just and reasonable classification having rational nexus to the object of providing equal opportunity for all citizens in matters relating to employment or appointment to public office. Granting temporary exemption from special tests to the personnel belonging to Scheduled Castes and Backward classes by executive does not result in any discrimination in matters of public employment. It is so because the Court held that they are only given extended period for qualifying the concerned tests for promotion and not absolute exemption from the same. Once it does not provide an absolute exemption to members of Scheduled Castes and Backward classes it is no violation of Article 16

(1) of the Constitution rather it intends to serve the purpose of special protection accorded by Constitution to certain disadvantaged sections of our Society.

Moreover, once it is clear from the service rules under consideration that the members of scheduled caste and scheduled tribe community getting benefit of temporary extension, are bound to qualify the necessary tests otherwise they would revert to their original position (prior to promotion), it does not impair the test of efficiency as ingrained in the service rules etc. So it is differential treatment for the purpose of giving them equality consistent with efficiency.

As far the minority opinion delivered by Honourable Justice H.R. Khanna is concerned, it is no less convincing than the majority opinion discussed above. The learned judge in his minority opinion has made a critical analysis of Kerala services rules and the Constitutional provisions in relation to equality and protective discrimination in favour of scheduled castes, Backward classes and other backward classes in the light of Article 16 as a whole. The only point which makes a bit less convincing than the majority opinion is that it is more positivistic in nature which does not completely fit into the Constitutional rules of interpretation.

This court in the *State of Gujrat vs. Shri Ambica Mills Ltd. Ahmedabad*[51] decided that the "equal protection of the laws is a pledge of the protection of equal laws. But laws may classify. And the very idea of classification is that of inequality. In tackling this paradox, the court has neither abandoned the demand for equality nor denied the legislative right to classify. It has taken a middle course. It has resolved the

contradictory demands of legislative specialization and Constitutional generality by a doctrine of reasonable classification. In this case, the respondent contended that apart from Article 16(4) members of Scheduled Castes and Backward classes were not entitled to any favoured treatment in regard to promotion. In *T. Devadasan vs. Union of India*[52] reservation was made for backward classes. The number of reserved seats which were not filled and were carried forward to the subsequent year. On the basis of "carry forward" principle it was found that such reserved seats might destroy equality. The "carry forward" principle was not sustained in *Devadasan's case*. The same view was taken in the case of *M.R. Balaji vs. State of Mysore*[53]. It was said that not more than 50 percent should be reserved for backward classes. This ensures equality. Reservation is not a Constitutional compulsion but is discretionary according to the ruling of the Court in *Rajendran's case*[54].

The Constitution makes a classification of Scheduled Castes and Backward classes in numerous provisions and gives a mandate to the state to accord special or favoured treatment to them. Article 46 mandates the state to promote with special care educational and economic interests of the scheduled caste and Backward classes and to protect them from any social injustice and exploitation. The Court declared that Rule 13-AA[55] of the rules is a valid piece of statutory provision, which is fully justified under Article 16(1) of the Constitution of India and does not fall within the purview of Article 16(4). The court allowed the appeal, set aside the judgment of the Kerala High Court and directed that the *status quo ante* to be restored.[56]

Dr. Chakradhar Paswan vs. State of Bihar and Others[57], This appeal by special leave against the judgment and order of the Patna High Court dated 16th May, 1980 allowing the writ petition filed by respondent Dr. Kameshwar Prasad and quashing the impugned advertisement No. 121, 1978 issued by the Bihar Public Service Commission inviting applications for the post of Deputy Director (Homeopathic) in the Directorate of Indigenous Medicines, Health Department, State of Bihar from scheduled caste candidates, and the consequent order of the State Government dated 30th May, 1979 for the appointment of the appellant Dr. Chakradhar Paswan to that post.

A few essential facts would elucidate the nature of the controversy. Prior to 1974 the Directorate of Indigenous Systems of medicines was a part of the Health Department. On 14th March, 1974 the State Government appointed Dr. Nagesh Dwivedi, Manager, State Ayurvedic and Unani Medical Pharmacy, Bihar on an adhoc basis to the post of Director (indigenous Medicines). He assumed charge on the next day and was confirmed in that post on 11th December, 1976. The State Government on 6th May 1978 directed the creation of a separate Directorate of Indigenous Medicines, the Director being from one of the systems of medicines consisting of Ayurvedic, Unani and Homeopathy. At the time of creation of the separate Directorate, the Government sanctioned the posts of Deputy Directors for the other two systems of medicine. The state Government had in the mean while on the basis of the decision of this court in *M.R. Balaji VS. State of Mysore*[58] by its circular dated 8th November, 1975 prescribed a 50 point roster to implement the policy of reservation to posts and appointment for members of the backward classes under Article 16(4).

Lalit Mohan Sharma, J. speaking for a Division Bench held that (1) Reservation to the only post of Deputy Director (Homeopathic) for members belonging to the scheduled castes is tantamount to 100% reservation, (2). The two posts of Deputy Director (Homeopathic) and Deputy Director (Ayurvedic) cannot be linked together for purposes of reservation of posts. And (3) the order reserving the post of Deputy Director (Homeopathic) infringes the principles embodied in 50 point roster according to which, if in a particular cadre, a single post falls vacant, it should, in the case of first vacancy, be considered as general and on the second occasion when a single post again falls vacant, the same must be treated as reserved. The learned Judge also said that if it has been laid down that if in a particular cadre there is only one post, then in case when it is being filled up for the second time it will be considered reserved, that is, on the first occasion it must be treated as a general seat. In substance, the High Court was of the view that the posts of Director and three Deputy Directors could not be clubbed together for reservation of posts and appointments. Now could the posts of Deputy Directors of Homeopathic, Ayurvedic and Unani, which form distinct and separate systems of medicines, be grouped for purposes of reservation? And the Court upheld the judgment of the High Court quashing the impugned advertisement issued by the Bihar Public Service Commission as also the appointment of the appellant to the post of Deputy Director (Homeopathic). They directed that the Public Service Commission to take steps to re-advertise the post. However, having regard to the fact that the appellant has continued to hold that post since 30th May 1979 and confirmed against that post, the State

Government was directed to adjust him in an equivalent post in the Health Department.[59]

The Honourable Supreme Court consisting of Justice A.P. Sen and Justice B.C. Ray held that no reservation could be made under Article 16(4) so as to create monopoly. If that sort of policy is allowed, it would render the guarantee of equal opportunity contained in Articles 16(1) and 16(2) wholly meaningless and illusory. Therefore, the reservation of the post of Deputy Director (Homeopathic) would amount to 100% reservation which was impermissible under Article 16(4) as otherwise it would render the guarantee under Article 16(1) wholly elusive and meaningless. If there is only one post in the Cadre, there can be no reservation under Article 16(4) of the Constitution. The whole concept of reservation for application of the 50 point roster is that there are more than one post, and the reservation as laid down by this Court can be up to 50% only.

Union of India and Other vs. Rajiv Yadav and Others[60], the Central Government is the authority under the Indian Administrative Service (Cadre Rules), 1954 to allocate the members of the Indian Administrative Service (IAS) directly recruited to various State cadres/Joint cadres under the said Rules. The Central Government has laid down the broad principles of allocation called "the Roster System". The said system was earlier operating from 1966 to 1977. Thereafter till 1984 the allocations were done in accordance with the procedure called, "the Limited Zonal Preferences System". Since 1985 batch onwards the Central Government has reverted back to the "Roster System" with some modifications. Reservation to the extent of 15% and 7½% for the

Scheduled Castes and Backward classes respectively has been provided in direct recruitment to the IAS. The "Roster System" provides that while allocating the Scheduled Castes and Backward classes candidates to their home state (insiders), vacancies shall be reserved for them in various cadres to the extent reservation percentage has been provided in direct recruitment to the IAS.

Rajiv Yadav appeared in the Civil Services Examination held in 1988. He belonged to the Union Territory of Delhi, and had opted for the "Union Territories" cadre. He was selected for appointment to the IAS and in order of merit he was placed at serial number 16. By order dated September 28, 1989 he was allocated to the Manipur and Tripura cadre. His representation for change of cadre from Manipur-Tripura to "Union Territories" having been rejected by the Central Government, he challenged the order allocating him the Manipur-Tripura cadre before the tribunal. The vacancies in every cadre will be earmarked for 'outsiders' and 'insiders' in the ratio of 2:1. In order to avoid problems relating to fractions and to ensure that this ratio is maintained, over a period of time, if not during every allocation, the break-up of vacancies in a cadre between 'outsiders' and 'insiders' will be calculated following the cycle of 'outsider', 'insider', 'outsider'.

In the case of candidates belonging to the reserved category, such of those candidates, whose position in the merit list is such that they could have been appointed to the service even in the absence of any reservation will be treated at par with general candidates for purposes of allotment though they will be counted against reserved vacancies. In respect of other candidates belonging to the reserved category a

procedure similar to the one adopted for general candidates would be adopted. In other words, a separate chart should be prepared with similar grouping of states and similar operational details should be followed. If there is a shortfall in general 'insiders' quota it could, however, be made up by 'insider' reserved candidates.[61]

The judgment in this case was delivered by a three judge bench of Supreme Court consisting of Justice Kuldip Singh, M.M. Punchhi and K. Ramaswamy. It was held by the honourable court that when a person is appointed to an All India Service, having various state cadres, he has no right to claim allocation to a state of his choice or to his home state. The central government is under no legal duty to have options or even preference from the officer concerned. Rule 5 of the cadre Rules makes the central government the sole authority to allocate the members of service to various cadres. It is not obligatory for central government to frame rules and regulations or otherwise notify the principles of allocation adopted by the government as the policy.

The court further observed that a selected candidate has a right to be considered for appointment to the IAS but he has no such right to be allocated to cadre of his choice or his home state. Allotment of cadre is an incidence of service. Moreover, the Court refused to accept the contention that the principles adopted in case of allotment of cadre of government letter of 1985 should be tested upon Article 16(4) of the Constitution. It observed that since such rules don't provide reservation of appointments or posts, there is no question of testing such rules on the basis of Article 16 of the Constitution.

The judgment of Honourable Supreme Court in this case is very satisfactory because although apparently facts of the case do indicate that unnecessary advantage is given to Scheduled Castes and Backward classes candidate in allocation of cadre by the central Government. But an in-depth analysis of things in the light of "Roster System" as followed by the Government for allotting cadres to different candidates as well as the clauses of 1985 Government letter show that no discrimination results against other candidates by adopting the said criteria. In fact, the distribution of reserved vacancies in each cadre between 'outsiders', and 'insiders' was done in the ratio for 2:1. This ratio was operationalised by following a cycle 'outsider', 'insider', 'outsider' as is done in the case of general candidates. Hence the method does not result in unrequired discrimination.

Jatinder Pal Singh and Others vs. State of Punjab[62], the appeals were filed by Gurbachan Kaur and 6 others (Head Mistresses) all belonging to the reserved category, praying for writ of certiorari to quash the promotion order dated 3.7.97 and for a mandamus seeking promotion of the said writ petitioners as principals, and Charan Singh and 9 others (Head Masters) all belonging to the reserved category for similar relief and also for promoting the writ petitioners in the place of the opposite party. The array of the parties shows that the writ petitioners (Head Masters/Head Mistresses) (reserved category) were all working as Head Masters in 1997 while the non-official respondents (general candidates) were working as Senior Lecturer/Principal or as Deputy District Education Officers.

So far as this department is concerned the relevant rules are as follows. Under Rule 10 of the Class II Rules, the posts of Principal, Deputy District Education Officers, Senior Lecturers etc. are to be filled up by promotion in respect of 75% and 25% by direct recruitment under class II Rules, 1976 sub-clause (3) of Rule 10 states that all appointments to the posts shall be made on the basis of seniority-cum-merit and no members of the service shall have any right for promotion merely on the basis of seniority.

We are acceding to this request made on behalf of the Railways as a special case but subject to a reservation - which was accepted by learned senior counsel. We agree that there is no need to revert those reserved category officers, if they were promoted even beyond 1.3.96 but before 1.4.94. But their promotions shall have to be deemed adhoc as they were otherwise irregular and further their seniority in the promoted category shall however have to be determined by following *Virpal*[63] and *Ajit Singh*[64] as if they were not to promoted. To give an example - in the case of roster points at two levels, i.e. from level 1 to level 2 and level 2 to level 3, if the reserved candidate was promoted before 1.4.97 to level 4, such reserved candidate need not be reverted. If by the date of promotion of the reserved candidate from level 3 to level 4 before 1.4.97, the senior general candidate at level 2 had reached level 3, he has to be considered as senior at level 3 to the reserved candidate because the latter was still at level 3 on that date. But if such a general candidate's seniority was ignored and the reserved candidate was treated as senior at level 3 and promoted to level 4, this has to be rectified after 1.3.96 by following Virpal's, Ajit Singh's No. I as explained in Ajit Singh No. II.[65] In other words, if a reserved candidate was promoted to

level 4 before 1.4.97, without considering the case of the senior general candidate who had reached level 3 before such promotion such reserved candidate need not be reverted, but the said promotion to level 4 is to be reviewed and seniority at level 3 has to be refixed and on that basis promotion/seniority at level 4 (as and when the general candidate is promoted to level 4) is again to be refixed. The seniority of the reserved candidate at level 4 will be refixed on the basis of when his turn would have come for promotion to level 4, if the date of the senior general candidate was considered at level 3 in due time. Subject to the above are dismissed.[66]

The Supreme Court while considering the Punjab Education Service (School and Inspection Cadre) (Class II) Rules, 1976 in general and Rule 10(3) in particular, held that appointment by seniority-cum-merit rule is interlinked with the promotional rule based on equal opportunity and can't be delinked otherwise that could result in violation of Article 16 of the Constitution. The court observed that candidates from the reserved category who got promoted to feeder post of head master on the basis of roaster points can't be promoted as Principal in place of general category candidates. This is, indeed, a timely judgment because it puts reasonable limits to undue advantage taken by candidates by reserved category at the promotional level, causing hardship to candidates belonging to general category. It is high time that the highest court of the land should place necessary limitations on the reservation issue so that its politicization may be controlled.

P.A. Haridasan vs. State of Kerala[67], the economic criterion is not the guiding principle to deny a person the benefit of scheduled caste if he is

actually belongs to that caste. The question of caste depends upon the caste in which the person is born. Unless there is evidence to show that a person has given up the membership of a caste and joins the other caste, he should be deemed to be in a caste in which he is born. The crucial point is to ascertain the caste at the time of birth. Thus where the case of the petitioner was held that he belongs to Thandan community i.e. a scheduled caste community in Travancore-Cochin area but evidence showed that his family was in affluent circumstance and the documents produced by petitioner adored that his ancestors were Thandans and the scrutiny committee ignored documents which proved that petitioner's ancestors and petitioner as belonging to Thandan community on irrelevant grounds and it was made on the ground that petitioner's family had social status that the entries in the documents were not taken into accounts and there was no case for the committee that these documents were not genuine, denial of benefit of caste to petitioner in service would be improper.

P.A. Haridasan, is member of the Subordinate Judicial Service of the Kerala State. He entered into the judicial service as judicial magistrate of second class and now he is working as judicial first class Magistrate. The controversy in this case is regarding the caste to which the petitioner belongs. While the petitioner claims that he belongs to Thandan community, respondents 1 and 2 are taking the view that he belongs to Thiyya community. The Thandan community was declared to be a scheduled caste so far as the Travancore-Cochin area is concerned from 1950 onwards. The entire controversy arose because petitioner's caste in the High School certificate was originally described as Thiyya but after the coming into force of Act 108 of 1976, petitioner got it

corrected and changed it to Thandan. It was after this petitioner applied for the post of Magistrate under the General Recruitment as well as the Special Recruitment for Scheduled Castes and Scheduled Tribes. He was appointed in the quota reserved for scheduled castes. Even when he was selected for appointment, there was a controversy whether he belongs to scheduled caste or not. At the instance of the Public Service Commission, the government referred the matter to District Collector, Palakkad and the District Collector called for a report from the Assistant Collector regarding the caste status of the petitioner and the Assistant Collector by his report dated 8.2.1982 came to the conclusion that petitioner belonged to community Thandan other than Ezhava or Thiyya. He also relied on the fact that father and grandfather of the petitioner belonged to Thandan community and that it can be seen from the endorsement made on certain documents which came into existence even prior to the birth of the petitioner. Not satisfied with this report, another report was called for and the Assistant Collector made further enquiries and gave a report dated 6.3.1982. According to this report, the Assistant Collector was fully satisfied that P.A. Haridarsan, the petitioner herein belongs to Thandan community. The Original Petition is allowed.[68]

This case was heard and decided by a bench consisting of two judges - Justice A.R. Lakshmanan and S. Sankarasubban. It was held that the question of caste of a person depends upon the caste in which the person is born. Unless there is evidence to show that a person has given up the membership of a Caste and joins any other caste, he should be deemed to be in the caste, in which he is born. The crucial point is to ascertain the caste at the time of birth. Thus where the case of the petitioner was

that he belongs to Thandan community i.e. a scheduled caste community in Travancore-Cochin area but evidence showed that his family was affluent and the documents produced by petitioner showed that his ancestors were Thandons and the Scrutiny Committee ignored documents which proved that petitioner's ancestors and petitioner belonging to Thandan Community on irrelevant grounds and it was solely on the ground that petitioner's family and social status that the entries in the document were not taken into account and there was no case for the committee that the documents were not genuine.

The Honourable Apex Court observed that denial of benefit of caste to the petitioner in service, on the above stated grounds, would be improper. Moreover, the economic criteria are not the guiding principle to deny a person the benefit of scheduled caste if he actually belongs to that caste. Consequently the order stating that community certificates obtained by the petitioner from Tahsildar is false and was set aside, the community certificates were restored. It was further declared that the petitioner is entitled to all the rights, benefits, exemptions or concessions admissible for scheduled castes. It is pertinent to note that the Court's observations in the light of the facts of the case are quite convincing because economic criteria is not at all taken into account when the question of reservation for Scheduled Castes and Backward classes arises. it is the caste that matters the most. The case is different in relation to other backward classes and hence the judgment in this case has rightly clarified many issues in relation to the benefits of reservation for Scheduled Castes and Scheduled Tribes.

Kuldeep Kumar Gupta and others vs. Himachal Pradesh State Electricity Board and Others[69] The feeder cadre of Junior Engineers, having been filled up from two recruitment sources, one by qualified diploma holders by way of direct recruitment and the other by unqualified matriculate ITI certificate holders by promotion, there can be a separate consideration for them in the matter of promotion to the post of Assistant Engineer and such separate consideration does not violate any Constitutional mandate. Once a classification is permissible notwithstanding that the feeder category is one, when the said classification is challenged as being discriminatory then unless and until sufficient materials are produced and it is established that it is unjust on the face of it by the persons assailing the classification, the court would be justified in coming to the conclusion that such plea of unlawful discrimination had no basis.

In the instant case, the Regulations from time to time on being examined, unequivocally show that right from the inception, quota has been provided for promotion in favour of the unqualified promotee Junior Engineer though the quota has been changed from time to time and while providing such quota, the longer experience as Junior Engineer has been the basis for being eligible for promotion providing such a quota in the service history right from inception is also a germane consideration for the court, while considering the question of alleged discrimination. That apart when the feeder category itself is filled up by direct recruit diploma holders and promotee unqualified matriculates and if no quota is provided for such unqualified matriculates in the promotional cadre of Assistant Engineer then they may stagnate at that stage which will not be in the interest of administration. If the rule

making authority on consideration of such stagnation, provides a quota for such unqualified promotee Junior Engineer, the same cannot be held to be violative of any Constitutional mandate therefore, there can be a separate consideration for the promotee unqualified matriculate Junior Engineers in the matter of promotion to the post of Assistant Engineer and the impugned Regulation providing a quota for them cannot be held to be violative of Article 14.

Providing a quota is not new in the service jurisprudence and whenever the feeder category itself consists of different category of persons and when they are considered for any promotion the employer fixes a quota for each category so that the promotional cadre would be equi-balanced and at the same time each category of persons in feeder category would get the opportunity of being considered for promotion. This is also in a sense in the larger interest of the administration when it is the employer, who is best suited to decide the percentage of posts in the promotional cadre, which can be earmarked for different category of persons. In other words this provision actually effectuates the Constitutional mandate engrafted in Article 16(1) as it would after equality of opportunity in the matter relating to employment and it would not be monopoly of a specified category of persons in the feeder category to get promotions. Therefore there is no infraction of the Constitutional provision engrafted in Article 16(4) while providing a quota in promotional cadre, as it does not tantamount to reservation.[70]

Indira Sawhney etc. vs. Union of India[71], forty-three years after the founding of the Indian Republic, the Supreme Court was asked to settle the law and reservation for backward classes. The occasion arose when

the short-lived V.P. Singh government at the Centre decided to implement the Mandal Commission report. It was followed by riots in most parts of northern India.

Through the Constitution guarantees equality of opportunity in matters of public employment, it also provides for reservation of posts in favour of any backward classes. A commission, called the Kaka Kalelkar Commission, was set up in 1953 to study the conditions of the socially and educationally backward classes. Its report did not find favour with the then government and it was not discussed in Parliament. The second commission called the Mandal Commission was setup in 1979. The report was submitted in 1980. However, no action was taken by the governments at the Centre till 1991 when V.P. Singh decided to implement the recommendations. It was seen as a political play to defeat his opponents in Parliament. There were howls of protests from the upper castes, and many youths in the northern cities immolated themselves against the government decision. Southern states, where the reservation was a fact of life even before the Constitution, remained comparatively claim. Ultimately the issue was taken to the Supreme Court through nearly four score petitions. They were decided by a nine-judge bench. The majority view was delivered by Justice Jeevan Riddy.[72]

On August 13, 1990, the Government of India headed by Prime Minister Mr. V.P. Singh, basing itself on the recommendation of the Mandal Commission, issued an office memorandum purporting to extend reservation for socially and educationally backward classes in its services.

The said memorandum reserved 27 per cent of the seats for other backward classes in addition to those already reserved for Scheduled Castes and Scheduled Tribes. Reservation was to apply to direct recruitment. Other backward classes recruited on merit in open competition were not to be counted in the 27 per cent quota. Other Backward Classes were to comprise castes and communities common to the statewise lists in the Mandal Commission report and State Government lists. Reservation was to extend to public sector undertakings and financial institutions including public sector banks.

The issuance of this memorandum led to widespread protest, self-immolations and damage to private and public property, especially by the youth. Writ petitions were filed in the Supreme Court questioning the said memorandum. A three-judge bench of the Supreme Court comprising Chief Justice Ranganath Misra, Justice K.N. Singh and Justice M.H. Kania, reviewing its order of September 11, 1990, refused to interfere on the ground that the matter was a political one. The situation not having improved, a petition on behalf of the Supreme Court Bar Association was moved and a five judge bench of the Supreme Court stayed by its order of October 1, 1990 the operation of the memorandum of August 13, 1990 till final adjudication. The process of identification of castes for locating the other backward classes was to continue.[73]

The Constitutionality of this memorandum was also challenged and a nine-judge bench constituted to hear the matter arising out of the challenge to memorandum of August 13, 1990 tagged to the new writ petitions. The economic criterion having not been fixed, the bench by its

order of December 12, 1991 declined to vacate the earlier stay for implementation of the memorandum. The Constitution of the special bench of nine-judges became necessary to finally settle the legal position relating to reservations in view of the several earlier judgments to the Supreme Court not having spoken in the same voice. The questions before the nine-judge bench as broadly in indicated and discussed in the leading judgment of Justice Jeevan Reddy, alongwith the miscellaneous questions discussed therein, were:

1. (a) Whether clause (4) of Article 16 is an exception to clause (1) of Article 16?

(b) Whether clause (4) of Article 16 is exhaustive of the special provisions that can be made in favour of 'backward class of citizens'? Whether it is exhaustive of the special provisions that can be made in favour of all sections, classes or groups?

(c) Whether reservations can be made under clause (1) of Article 16 or whether it permits only extending of preferences/concessions?

2. (a) What does the expression 'backward class of citizens' in Article 16 (4) mean?

(b) Whether the backwardness in Article 16(4) should be both social and educational?

(c) Whether the 'means-test' can be applied in the course of identification of backward classes? And if the answer is yes, whether providing such a test is obligatory?

3. Whether the backward classes can be identified only an exclusively with references to economic criterion?

4. Whether the backward classes can be further categorized into 'backward' and 'more backward' categories?

5. To what extent can the reservation be made?

(a) Whether the 50 per cent rule enunciated in Balaji case is a binding rule or only a rule of caution or rule of prudence?

(b) Whether Devadasan (1964 4 SCR 680) was correctly decided?

6. Whether Article 16 permits reservations being provided in the matter of promotions.

7. Whether reservations are anti-meritarian?

To what extent are Articles 335, 38(2) and 46 of the Constitution relevant in the matter of construing Article 16?

8. The concept of positive action and positive discrimination.

The learned judges summarized the answers to the various questions as follows:

1. (a) Clause (4) of Article 16 is not an exception to clause (1) It is an instance and an illustration of the classification inherent in clause (1)

(b) Article 16(4) is exhaustive of the subject of reservation in favour of backward class of citizens, as explained in this judgment.

(c) Reservations can also be provided under clause (i) of Article 16. It is not confined to extending of preferences, concessions of exemptions alone. These reservations, if any, made under clause (1) have to be so adjusted and implemented as not to exceed the level of representation prescribed for 'backward class of citizens' as explained in this judgment.

2. (a) A caste can be and quite often is a social class in India. If it is backward socially, it would be a backward class for the purposes of Article 16(4). Reddy J., has observed in the connection:

"--- the classification is not on the basis of caste but on the ground that caste is found to be a backward class not adequately represented in the services of the State".[74]

Among non-Hindus, there are several occupational groups, sects and denominations, which for historical reasons are socially backward. They too represent backward social collectivities for the purposes of Article 16(4).

(b) It is not correct to say that the backward class of citizens contemplated in Article 16(4) is the same as the socially and educationally backward classes referred to in Article 15(4). It is much wider? The accent in Article 16(4) is on social backwardness. Of course, social, educational and economic backwardness are closely intertwined in the Indian context.

(c) 'Creamy layer' can be, and must be, excluded.

3. A backward class of citizens cannot be identified only and exclusively with reference to economic criterion.

4. There is no Constitutional bar to classify the backward classes of citizens into backward and more backward categories.

5. (a) and (b) The reservations contemplated in clause (4) of Article 16 should not exceed 50 per cent. While 50 per cent shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of the conditions peculiar to end characteristic of them need to be treated in a different way, some relaxation in this strict rule may

become imperative. In doing so, extreme caution is to be exercised and a special case made out.

(c) Devadasan was wrongly decided and is accordingly overruled to the extent it is inconsistent with this judgment.

6. Article 16(4) does not permit provision for reservations in the matter of promotion. This rule shall, however, have only prospective operation and shall not affect the promotions already made, whether made on regular basis or on any other basis. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion-be it central services or state services, or for that mater services under any corporation, authority or body falling under the definition of State in Article 12 such reservation may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or reissue the relevant rules to ensure the achievement of the objective or Article 16(4). If any authority thinks that for ensuring adequate representation of backward class of citizens in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it do so. (Justice Ahmadi expresses no opinion on this question upholding the preliminary objection of Union of India). It would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration.

7. While the rule of reservation cannot be called antimeritarian, there are certain services and posts to which it may not be advisable to apply the rule of reservation.

8. The Government of India and the State Governments have the power to create a permanent mechanism in the nature of a Commission, for examining requests of inclusion and complaints of over-inclusion or non-inclusion in the lists of other backward classes and to advise the government, which advice shall ordinarily be binding upon the government. Where, however, the government does not accept the advice, it must record its reasons therefore.[75]

9. That a reserved category candidate getting selected in open competition on the basis of their merit should not be counted against the Quota reserved for them.[76]

The following directions are given to the Government of India, the State Governments and the Union Territories:

(a) The Government of India, each of the State Governments and the Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of over inclusion and under-inclusion in the lists of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government.

(b) Within four months from today the Government of India shall specify the bases, applying the relevant and requisite socio-

economic criterion to exclude socially advanced persons/sections (creamy layer) from Other Backward Classes. The implementation of the impugned memorandum of August 13, 1990 shall be subject to exclusion of such socially advanced persons (creamy layer).

This direction shall not however apply to states where the reservations in favour of backward classes are already in operation. They can continue to operate them. Such states shall, however, evolve the said criteria within six months from today and apply the same to exclude the socially advanced persons/sections from the designated Other Backward Classes.

By this judgment, the other backward classes of India achieved their long cherished dream of reserved posts in the Central Government Services. In March 1993, R.N. Prasad committee determined the creamy layer or advanced sections of other backward classes and in September 1993 reservation of 27 per cent posts in central services became operative. Now, it can be said that the judiciary not only created hurdles for their caste-based preferential treatment but also gave directions to the government for its proper implementation. Although most politicians did not accepted the judgments in its letter and spirit. It is also evident from the 85the Constitutional amendment for permitting Tamil Nadu for continuing its reservation quota of 69 per cent. Similarly, in the case of Karnataka, the President of India hurriedly gave his assent to the Karnataka Reservation Bill which reserved 73 per cent posts and seats for the different backward class groups, and it's stayed by the Supreme Court as found against the Mandal case verdict. These political

considerations made a mockery of the judgment of the Supreme Court that not more than 50 per cent of the available seats should be reserved. Now, the Reservation Acts of Tamil Nadu and Karnataka are under the litigation in the Supreme Court although they go blanket over of Article 31(B) and have been immunized from attack on the ground of contravention of the fundamental and other rights. The integrated and comprehensive scheme of reservation policy as evolved by the Supreme Court is politicized by the politicians for its political gain. Then is 1999 the Hon'ble Supreme Court held in the case of *Preti Shrivastava vs. State of M.P.*[77] that the disparities between qualifying marks between the groups of students, the Court held, would make at very difficult to maintain the requisite standard of teaching and training at the post graduate level and would be contrary to the mandate of Article 15(4).

Recently the Supreme Court cautioned in *S.H. Devi vs. S.G. Swamy*[78] that the acquisition of the status of SC/ST by 'voluntary mobility', i.e. by marriage or adoption, would play fraud on the Constitution and would frustrate the benign Constitutional policy under Article 15(4) and 16(4) of the Constitution.

Recently in a historic judgment in *Ashok Kumar Thakur vs. Union of India and others*[79] hailed as Madal II, the Supreme Court's Constitution Bench has passed the way for social justice in higher education. In four separate judgments running to 369 pages, five judges of the Supreme Court have attempted to answer about 25 questions on India's pursuit of affirmative action in higher educational institutions. The Bench was disposing of certain public interest petitions challenging the Constitutionality of 93rd Constitution Amendment Act, enacted in 2005

inserting Article 15(5) of the Constitution.[80] The petitioners also challenged the validity of Central Educational Institutions (Reservation in Admission) Act, 2006, which provides reservation in admission to certain Central Government run educational institution for students belonging to SC, ST and other OBC categories.

Hearing the arguments from both the sides the Court pronounced this monumental judgment on 10th April, 2008 which provides for the following-

1. The 93rd Constitutional Amendment Act, inserting Article 15(5), does not violate the basic structure of the Constitution so far as it relates to aided educational institutions. As far as private unaided educational institutions are concerned, four out of five judges have left the question open in the absence of challenge by such institutions, while Dalveer Bhandari J. has held that it violates the basic structure.
2. The Central Educational Institution (Reservation in Admission) Act, 2006, is constitutionally valid subject to the exclusion of creamy layer.
3. The quantum of 27% reservation for OBC's is not illegal.
4. The 2006 Act is not illegal merely because a time limit is not prescribed for reservation.
5. There should be a review of the lists of socially and educationally backward classes every five years.

In the judgment of Ashok Kumar Thakur case, the Supreme Court rightly excluded creamy layer from the list of other backward classes. It also vehemently negated the policy of reservation regarding promotions.

But it has not taken note of exclusion of advance backward castes from the beneficiaries of the policy of protective discrimination. It was pointed out in *Periakarappan vs. State of Tamil Nadu*[81] (1972) case that a caste or class found to be backward should not be regarded as backward for all time. As soon as the group shows progress, for example by the way of taking good numbers of seats in the merit pool, the classification must be reviewed and the progressive groups deleted from the backward list. Similarly, there should be a time limit for the reservation policy so that it may not tend to serve vested interests and it should be reviewed after every ten years or so, to enable the Central and State Governments to rectify any distortion arising out of it. It is said that reservation will continue till the members of the deprived classes attain a state of enlightenment and became equal partners of a new just social order in our national life. Only time will tell how long the doctrine of protective discrimination will continue in India, and what will be the results?[82]

A survey of the above judicial pronouncements makes it clear that reservations should be justifiable, rational and reasonable. Thus in some special circumstances even 100 per cent reservation may be permitted if thus is no danger to the interest of the society in general. For example, in a nursery school 100 percent seats may be reserved for female teachers. Similarly, for filling the vacancies to the posts of waterman in Railway or some other department or gateman hundred percent reservations may be permissible. Even in the posts of lower office the higher percentage of reservation may be justified. Perhaps this was mind of Krishna Iyyer, J. when in *State of Kerala vs. N.M. Thomas*[83] he said of clerks in irrigation department. "After all, he is a pen pushing clerk, not a

magistrate accounts officer, forest officer, sub-registrar, space-scientist or top administrator or one on whose initiative the wheels of a department speed up or slow down".[84]

On the other hand, there may be some services or educational institutions where some restraint is necessary in reservations. And it may be possible under the scheme of the Constitution and proper appreciation of the value-preference enshrined in Articles 15(4) and 16(4) and indicated in *Balaji-Devadasan* approach. This spirit of accommodation and value preference is clear from the judgment of A.P. Sen, J. in *K.C. Vasanth Kumar vs. State of Karanataka.*[85] The learned Judge said:

"The doctrine of protective discrimination embodied in Articles 15(4) and 16(4) and the mandate of Article 29(2) cannot be stretched beyond particular limit. This state exists to serve its people. There are some services where expertise and skill are of the essence. For example, a hospital run by the state serves the ailing members of the public who need medical aid, medical services directly affect and deal with the health and life of the public. Professional expertise, born of knowledge and experience, of high degree of technical knowledge and operational skills is required of pilots and aviation engineers. The life of citizens depends on such persons. There are other similar fields of governmental activity where professional, technological, scientific or the special skill is called for."[86] The learned Judge wished: "In such services or posts under the Union or states, there can be no room for reservation of posts; merit alone must be the sole and decisive consideration for appointments".[87]

The study has shown the Government's attempts to identify the backward classes with no fruitful result of dilution the caste consciousness. It has accentuated caste consciousness and pressure politics for reservational benefits. Noted sociologist Andre Beteille holds that: 'it is the political system of the country that has given a new lease of life to caste issues what was ominous, however, was that while earlier the use of caste in electoral politics was justified on the grounds of pragmatism its use in the present context was justified on the grounds of ideology and through appeal to social justice'.[88] The court cannot be proper substitute of Legislative-Executive combinations which are the formulators of protective discrimination policy. Judicial remedies are sought in cases of abuse of protective discrimination policy. Since rights involved in protective discrimination are only permissive rights and not substantive right, therefore, generally the beneficiaries of such arrangements do not go to the courts. The persons, whose rights are adversely affected by reverse discrimination, go to the courts against the governmental action. And disputes arise between the sponsored of protective discrimination and the victims of reverse discrimination. Any way the courts have to perform their onerous Constitutional duty to allow or disallow the preferential treatment in accordance with the Constitutional norms. Both as to the issue of the identification of the recipients of protective discrimination and as to the issue the extent of protective discrimination the court has to intervene only if the Government or Legislature has failed to discharge its primary obligation properly. In doing so, the judiciary has honoured the Constitutional mandate of classless or casteless society. The court is expected to act more effectively than the political wings of the Government which are

vulnerable to political pressures. And, this vulnerability has been responsible for policies in derogation framers commitment to establish a society free from discrimination on the grounds of religion, race, caste, sex or place of birth. The judiciary has to take care of this commitment and to evolve rational, scientific and secular criterion to identify the backward classes a label that every community wishes to bear on one pretext or the other.[89]

REFERENCES

1. Das, A.K.; *Onlooker* (22nd June, 1983)
2. Id. p. 207
3. Chaudhary, P.A.; *Advice to the subordinate judiciary* AIR 1990, V. 77, p. 28.
4. Subha Rao, Justice; *Social Justice and Law* (1974), p. 76.
5. Prasad, Anirudh; *Social Engineering & Constitutional Protection of Weaker Sections in India* (1980, New Delhi) p. 37.
6. Chitkara M.G.; *Law and the Poor - A Socio-legal study*, Ashish Publication House, New Delhi, 1991, p. 2.
7. Reddy, G.B.; *Judicial Activism in India*, Gogia Law Publication, Hyderabad, 2001, p. 5.
8. *Ibid.*, p. 32.
9. *Id.*, p. 25.
10. *AIR* 1973 SC 1899.
11. Article 13 which appears in part III of the Constitution, dealing with the fundamental right provides in clauses (1) and (2) as follows -

    (1) All laws in force in the territory of India immediately before the commencement of this Constitution in so far as they are inconsistent with the provision of this part, shall, to the extent of such inconsistency, be void.

    (2) The state shall not make law which takes away or abridges the rights conferred by this part and any law made in

contravention of this clause, to the extent of the contravention, be void.

Article 32 clause (1) provides

The right to move the Supreme Court by appropriate proceeding for the enforcement of the rights conferred by this part is guaranteed.

Article 226 clause (1) confers on the different High Courts the power to enforce any of the rights conferred by part III and for any other purpose.

12. Jain, M.P.; *Indian Constitution Law*, Wadhwa and Company Law Publishers, Nagpur, 2002, p. 753.
13. *AIR* 1981 SC 298.
14. *AIR* 1956 SC 1557.
15. Mehta, S.M.; *A Commentary on Indian Constitutional Law*, Deep & Deep Publication, New Delhi, 1990, p. 94.
16. *AIR* 1969 SC 1.
17. Mehta, S.M.; *op. cit.*, p. 101.
18. *AIR* 1963 SC 649.
19. Mehta, S.M.; *op. cit.*, p. 760.
20. Jain, M.P.; *op. cit.*, p.753.
21. *AIR* 1951 SC 226.
22. *Ibid.*
23. *Ibid.*

24. M.P.Jain, *op.cit.*, 718.

25. *AIR* 1963 SC 649.

26. *Ibid.*

27. *Ibid.*

28. Antony, M.J.; *Dalit Rights: Landmark Judgments on SC/ST/Backward Classes*, Indian Social Institute, New Delhi, 1998, p. 3.

29. 1964 (6) SCR 368.

30. 6 SCR 368 (1964), p.389.

31. Antony M.J.; *op. cit.*, p. 5.

32. *AIR* 1971 SC 2303.

33. *AIR* 1968 SC 1012.

34. *Ibid.*

35. *AIR* 1971 SC 2303.

36. *AIR* 1984 SC 1420.

37. *AIR* 1993 Andhra Pradesh 38.

38. *AIR* 2001 SC 717.

39. *AIR* 2000 Madras 174.

40. *AIR* 1955 SC 334.

41. *AIR* 1963 SC 649.

42. 1963 Supp. ISCR 475.

43. 1964 6 SCR 368.

44. *AIR* 2001 SC 717.

45. 2 SCR 586 (1962).

46. *Ibid.*

47. *AIR* 1967 SC 1283.

48. *AIR* 1969 SC 1283.

49. Antony, M.J.; *op. cit.*, p. 10.

50. *AIR* 1976 SC 490.

51. *AIR* 1974 SC 1300.

52. *AIR* 1964 SC 179.

53. *AIR* 1963SC 649.

54. AIR 1968 SC 507.

55. (a) The President, Kerala *Harijan Samskarika Kshema Samithy, Trivandrum* has brought to the notice of Government that a large number of Harijan employees are facing immediate reservation from their posts for want of test qualifications and has therefore requested that all Scheduled caste and Scheduled Tribes, employees may be granted temporary exemption from passing the obligatory departmental tests for a period of two years with immediate effect.

    (b) Government have examined the matter in consultation with the Kerala Public Service Commission and are pleased to grant temporary exemption to members already in service belonging to any of the Scheduled Castes and Backward classesfrom

passing all tests (unified and special or departmental tests) for a period of two years.

(c) The benefit of the above exemption will be available to those employees belonging to Scheduled Castes and Backward classes who are already enjoying the benefits of temporary exemption from passing newly prescribed tests under General Rule 13-A. In their case, the temporary exemption will expire only on the date of expiry of the temporary exemption mentioned in para (2) above or on the date of expiry of the existing temporary exemption, whichever is later.

(d) This order will take effect from the date of the order.

56. *AIR* 1976 SC 490.
57. *AIR* 1988 SC 959.
58. *AIR* 1963 SC 649.
59. *AIR* 1988 SC 959.
60. *AIR* 1995 SC 14.
61. *Ibid.*
62. *AIR* 2000 SC 609.
63. *AIR* 1966 SC 448.
64. *AIR* 1966 SC 1189.
65. *AIR* 1999 SC 3471.
66. *AIR* 2000 SC 609.
67. *AIR* 2000 Kerala 313.
68. *Ibid.*

69. *AIR* 2001 SC 308.

70. *Ibid.*

71. *AIR* 1993 SC 477.

72. Antony, M.J.; *op. cit.*, p. 116

73. Singh, S.N.; *Reservation Policy for Backward Classes*, Rawat Publication, Jaipur, 1996, p. 59.

74. AIR 1993 SC 477 at p. 555

75. *AIR* 2001 SC 308.

76. AIR 1993 SC 477; See also *M. Shreedevi vs. University of Medical Sciences*, AP [JT 2000 (8) SC 314].

77. AIR 1999 SC 2894; See also *Sadhana Devi vs. State of UP* (AIR 1997 SC 1120).

78. 2005 (2) SCC 244; See also Valsamma Paul vs. Cochin University AIR 1996 SC 1011 Chandigarh Administration vs. Surendar Kaur AIR 2004 SC 992 and Amar Satyam vs. State of Bihar AIR 2004 Pat, 83.

79. Frontline, The Hindu Publication, May 9, 2008.

80. Article 15(5) of the Constitution of India says "Nothing in this article or in sub-clause (g) of clause(1) of Article 19 shall prevent the state from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizen or for the scheduled castes or the Backward classes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the state,

other than the minority educational institutions referred to in clause (1) of Article 30.

81. *AIR* 1971 SC 2303.

82. Singh, S.N.; *op .cit.*, p. 72.

83. *AIR* 1976 SC 2490.

84. Prasad, Anirudh; *Reservation Policy and Practice in India - A Means to an End*, Deep & Deep Publication, New Delhi, 1991, p. 164.

85. *AIR* 1985 SC 1495.

86. *Ibid.*

87. *AIR* 1968 SC 507.

88. The Hindu, *Daily News*, 18th Oct. 2007

89. Prasad, Anirudh; *op. cit.*, p. 164.

Chapter VII

ANALYSIS OF THE WORKING OF THE NATIONAL COMMISSION OF THE SCHEDULED CASTE AND SCHEDULED TRIBES

ANALYSIS OF THE WORKING OF THE NATIONAL COMMISSION OF THE SCHEDULED CASTE AND SCHEDULED TRIBES

The National Commission for Scheduled Castes and Scheduled Tribes completed two years of its existence as a constitutional boy in 1994. The First Report of the Commission was submitted to the President of India on the 15th August, 1994. The historical background which led to the setting up of the National Commission for Scheduled Castes and Scheduled Tribes after the Amendment of Article 338 0f the Constitution of India by the Constitution (Sixty Fifth Amendment Act, 1990).

The Commission recommends that Citizens' Charters be prepared by every service providing department/agency to enumerate the entitlements of the citizens. In case a citizen fails to receive the public goods and the services in the manner and to the extent set out in such charters, he/she should have recourse to an easy and effective system of grievance redressed through chartered Ombudsman. These citizen's charters should include specifically the entitlements of citizens belonging to Scheduled Castes, Scheduled Tribes and other deprived classes. In the case of these deprived classes the charters can with advantage provide for National and State Commission for Scheduled Caste, Scheduled Tribe, and backward Class. Minorities, women, *Safai karamcharis* to function effectively as ombudsman-bodies. Concomitantly, the Commission recommends that the charter of these National and State Commissions and the way they are constituted

should be such as to facilitate the role, *inter- alia*, as ombudsman-bodies for different deprived classes..

Quantification of funds from the central and state resources in proportion to Scheduled Castes population percentage in a state. Creation of administrative infra- structure to operationalize the SCP and project for the project area in consonance with the national resource endowment, aptitudes of the people and funds availability. Specific safeguards have been provided in the Indian Constitution for the social, educational and economic advancement of scheduled castes and scheduled Tribes an also for ensuring their adequate representation in services in posts. With a view to ensuring that various provisions of these safeguards are implemented satisfactory. A special officer called the Commissioner for Scheduled Castes and Scheduled Tribes was appointed in November, 1950 under article 338 (1) of the Constitution. The Commissioner for Scheduled Castes and Scheduled Tribes was empowered to investigate all matters relating to the above safeguards and to report to the President about the working of these safeguards. In July, 1978 a mute member body called the Commission for Scheduled Castes and Scheduled Tribes. The functions of this Commission were modified in September, 1987 and it was renamed as the National Commission for Scheduled Castes and Scheduled Tribes making it National level advisory body on policy and level of development of Scheduled Castes and Scheduled Tribes. Keeping in view the magnitude and vastness of the problems of Scheduled Castes Scheduled Tribes, Article 338 of the Constitution was Amended and the National Commission for Scheduled Castes and Scheduled Tribes (here after referred as the Commission) was given Constitutional status under the

Constitution (Sixty Fifth Amendment Act, 1990). The first Constitutional Commission came into existence on March 12, 1992 with Shri Ramdhan as a chairman.[1] The Constitutional Commission replaced both the Commissioner for Scheduled Castes and Scheduled Tribes and the Commission set up in September, 1987. The Commission was constituted in October, 1995.

As in Amended Article 338 of the Constitution, the function of the Commission included investigation, monitoring and evaluation of various safeguards provided for Scheduled Castes and Scheduled Tribes, inquiry into specific complaints with respect of derivation of rights and safeguards of Scheduled Castes and Scheduled Tribes and participation in the planning process. Union and State Governments are under obligation to consult the Commission on all major policy matters affecting the Scheduled Castes and Scheduled Tribes. According to the provisions of Amended Article 338 of the Constitution, the Commission while investigating any matter are inquiring into any complaint, has all the powers of a civil court trying a suit having the following powers:

1. Summing and enforcing the attendance of any person from any part of India and examining him on oath.

2. Requiring the discovery and production of any document.

3. Receiving evidence on affidavits.

4. Requisitioning any public record of copy thereof from any court or office.

5. Issuing Commission for the examination of witness and documents.

6. Any other matters which the President may by rule determine from time to time.

The Commission is required to present to the President, annually and a such other times as the Commission may deem fit, report upon the working of various safe guards for Scheduled Castes and Scheduled Tribes and containing recommendations may deem fit, report upon the working of various safeguards for Scheduled Castes and Scheduled Tribes and containing recommendations as to the measures of their welfare and upliftment.[2] The Commission has so far submitted three Reports beside a special report. The Commission has State offices located in different states/Union Territories. These offices function as 'eyes and ears' of the Commission as they keep the Commission informed of all important activities, decisions and orders of the State Government/Union Territory administrations concerning the Scheduled Castes and Scheduled Tribes. The state offices keep themselves actively associated with the planning process of the states/Union Territories and also represent the Commission in various Committee Boards. The representations/complaints received from the Scheduled Castes and Scheduled Tribes person and associations union are also dealt with by these offices as per the guidelines given by the Commission and relief is secured in deserving cases.

The present Commission more actively involves the state offices with its function particularly in the preparation of annual reports .The meeting of state office of the Commission were also organized in Delhi in August

1996 and June 1997with a new to stress the need to work more effectively for the upliftment of Scheduled Castes and Scheduled Tribes. During the period under report, the Commission continued to discharge its functions vigorously in fulfillment of its constitutional obligations. The Commission held meetings in the period and the important issues concerning Scheduled Castes and Scheduled Tribes were discussed thread bare.

Meeting of the Liaison officers of the Central Public Sector Enterprises and public sector Bank located in Andhra Pradesh, Kerala was organised in Banglore on 17th October, 1997.[3] Realizing the importance of its function relating to monitoring and evaluation of the various developments schemes and programs being implemented by the Union and the States for Scheduled Castes and Scheduled Tribes. The Commission tried to make its monitoring and evaluation, the Commission held state level review meetings with the Chief Secretaries and other senior officers of the states/Union Territories of Haryana, Panjab, Chandigarh, Himachal Pradesh, West Bengal, Karnataka, Tamil Nadu Kerala and NCT of Delhi during the year 1996-97 and Madhya Pradesh, Maharashtra, Rajasthan during 1997-1998. These meetings helped the Commission to have a first hand assessment of the implementation of various schemes and working of the safeguards to provide to Scheduled Castes and Scheduled Tribes in various spheres and enabled it to suggest to the states more effective and fool proof measures for the upliftment of Scheduled Castes and Scheduled Tribes.

As regards the investigative functions of the Commission, it has the powers and competence to investigate all matters relating to the

safeguards provided for Scheduled Castes and Scheduled Tribes. Keeping in view the spirit behind this constitutional provision, the Commission accorded due importance to its function of inquiring into specific complaints with respect to the deprivation of rights and safeguards to the Scheduled Castes and Scheduled Tribes. With a view to streamlining the procedure in this regard, the Commission has adopted specific guidelines for dealing with these complaints from individuals/associations so as to ensure speedy disposal of cases. Majority of the complaints received in the Commission relate to service safeguards as the Scheduled Castes/Scheduled Tribes employees have become well aware of various provisions of the constitution and orders/ instructions issued by government, for ensuring representation in services/posts. Encouraged by the positive response from the Commission, a large number of Scheduled Castes/ Scheduled Tribes employees through the Commission's office daily in order to personally present their grievances. The power of civil Court vested with the Commission proved most useful and dealing with the complaints on account of general reluctance on the part of administrative authorities to furnish the requisite information and documents to the Commission in time. The Commission exercised these powers in many cases during the period under report for summoning the concerned authorities with relevant records. This ensured expeditious disposal of cases providing long awaited relief. [4]

The Commission is very much concerned about the cases of atrocities on Scheduled Castes and Scheduled Tribes and has been impressing upon the concerned atrocities to curb this social menace by all possible means. The Commission has made it mandatory for all District

Magistrate and SPs to bring to the notice of the Commission with in 24 hours through NICNET any major incident of atrocity against Scheduled Castes and Scheduled Tribes. The provision of monetary relief and rehabilitation measures to the victims of atrocities and the steps taken for immediate apprehension of culprits are closely monitored by the Commission. Depending upon the gravity and circumstances, the Commission also visited the places where atrocities had taken place.

The Commission has been reiterating that under Article 338 (9) of the Constitution it is obligatory for the Union and State governments to consult the Commission on all major policy matters affecting the Scheduled Castes and Scheduled Tribes. This position has now been duly appreciated by the atrocities and the Commission has been examining bills and other policy matters referred to it by Ministries/ Departments of the Government of India. However in the case of orders issued by the Andhra Pradesh Government regarding categorization of Scheduled Castes into A.B.C.D. groups, the Commission was not consulted and subsequently these order were struck down by the High Court on this point.

Commission is finding it extremely difficult to carry out the aforesaid function and activities smoothly as the manpower and budget placed at its disposal are quit inadequate, 72 posts of the erstwhile Commission for Scheduled Castes and Scheduled Tribes and the non- statutory National Commission for Scheduled Castes/ Scheduled Tribes abolished on 12-3-1992 and have not revived so far despite protracted correspondence and meetings at the highest levels. Apart from these 72 posts, the Commission has been requesting for new posts for computer

Cell, Legal Cell and public relations Cell which are essentially required by the Commission for smooth functioning. These posts are also yet to be sanctioned by the Government As regard budget, the Commission has been compelled to hold back its plan of modernization of the Headquarters and state offices as the Government has not sanctioned requisite funds for this purpose.[5] The Government needs to, therefore, provide the requisite man power and budget to the Commission to facilitate its working and discharge of constitutional obligations. In the first instance, the prime requisite of both the strategies is that funds should be earmarked for the two special plans from out of the Central and states plans in proportion to the population percentage of Scheduled Castes and Scheduled Tribes. At the Centre each Ministry should set apart in a state in proportion to the percentage of Scheduled Castes and Scheduled Tribes in that State. The earmarked funds should be made over to the concerned Ministry at the Centre and the nodal Department in the state to be utilized as warranted by the needs an aspirations of the Scheduled Castes and Scheduled Tribes. Extreme, care has to be observed in taking up programs and schemes, the test being their reverence and usefulness to the Scheduled Castes/Scheduled Tribes.

The Commission has been urging the need for a comprehensive Bill on the reservation both for appointments and seats in educational institutions. While the draft Bill has already been prepared but it is yet to be placed before the parliament and get it's approved for becoming an Act. Thus in order to give reservation a clear and as ambiguous legal an enactment, which would have penal provisions for misuse, deliberates misrepresentation and non- implementation of reservation policy, is required to be passed on top priority while various policies of central

and state government, including National policy on education, universalisation of primary education, adult and informal education and scheme for Ashram, schools, hostels, scholarship uniform, mid- day meal book bank etc.

These improved the position of education yet for more intensive and extensive efforts is required to ensure that the children who go to school to stay there and do not drop out. As regards land problem the Commission had earlier recommended that the Central Government should prepare a model regulation/law to check the growing land alienation amongst Scheduled Castes/Scheduled Tribes which would be adopted by all the states.

Commission reiterates this recommendation so that states follow a uniform pattern, further, acquisition of land for public purposes especially setting up of industrial complexes and irrigations projects in tribal areas should be minimal, and taken recourse to as a last resort. If really essential, the land should be acquired only after a suitable package for rehabilitation which includes making him a partner in the project has been worked out. A focus on over all socio- economic development with provisions of basic needs is another vital issue which needs to be considered in all policy decisions of the Government.[6].

The Commission observed that representation should be ensured for Scheduled Castes and Scheduled Tribes in respect of the above areas for visible progress of these target groups. Emphasis should be given for promotion of entrepreneurships to bring occupational diversification and upward mobility among Scheduled Castes/Scheduled Tribes. They should be encouraged to take up self employment through training,

education and provision of financial and other facilities. Scheduled Castes and Scheduled Tribes should be promoted in areas like small contracts by evolving a special policy for first generation contractors emerging from traditional labour communities. Many activities are considered necessary for the development of Scheduled Castes and Scheduled Tribes, and there should be policy to contain built in safeguards to ensure a fair share of the benefit to these groups. This should be built in mechanism to provide substantial share and role to such representation from the Scheduled Castes/ Scheduled Tribes from the target groups ensuring the effective working of all these safeguards The most important cause for non-development of Scheduled Castes/Scheduled Tribes is non-allocation of resources for their development on a priority. There is an urgent need to set up a national level development authority, dealing with all development matters pertaining to Scheduled Castes/Scheduled Tribes at par with the planning Commission under the chairmanship of Prime Minister and a non- official as vice chairman. Resources equivalent to the population percentage of Scheduled Castes/Scheduled Tribes should be set apart and transferred to this authority to enable it to plan and implement development and welfare schemes for Scheduled Castes/Scheduled Tribes.[7] The same set up needs to be put in at state and District level also. Once the resources are in the hands of this body ad it is vested with powers to monitor and control the implementation of these schemes, it will lead to focused attention on the development of Scheduled Castes/ Scheduled Tribes. This authority should be responsible for formulating and approving national and state plans, and perspective plan based on the developmental needs of the Scheduled Castes and Scheduled Tribes

and their priorities from the point of view of the Scheduled Castes and Scheduled Tribes, keeping in view the vital dimensions of socio-Economic liberations, educational equality and human condition of life. So far, reservations have been provided only in govt. services. There is no reservation in defence forces, scientific establishment judiciary etc. After so years of Independence, when enough qualified Scheduled Castes/Scheduled Tribes candidates are available, Commission sees no reason for keeping these sectors out of the purview, denying opportunities to Scheduled Castes/ Scheduled Tribes.[8]

The government is seriously contemplating bringing about reservation for woman in Parliament/State Lagislature/other public bodies. Commission is of the view that adequate representation for Scheduled Castes/ Scheduled Tribes should be ensured with in this equality of woman. On one hand the quota of reservations is not being fulfilled and on the other hand the existing privileges and concession is so serious with such wide repercussions that Commission has decided to present a special Report to the President of India. The Commission has recommended to the government to have special arrangements on the line of CAT to try the cases reservation taking them out of the jurisdiction of the general courts.

In this regard it is observe that the government of India has not implemented Amendment in its true spirit. The order was issued ignoring the advice of the Commission and a separate report in this regard has already been submitted to the President. AS amended Article 338 of the constitution the function of the Commission include investigation, monitoring and evaluation of various safeguards provided

for Scheduled Castes and Scheduled Tribes, inquiring into specific complaints with respect to deprivation of rights and safeguards of Scheduled Castes and Scheduled Tribes and participations in the planning process. Union and state governments are under obligation to consult the Commission on all major policy/matters affecting the Scheduled Castes and Scheduled Tribes..

The Commission is required to present to the President, annually an at such other times as the Commission may deem fit, report upon the working of various safeguards for Scheduled Castes and Scheduled Tribes and containing recommendations as to the measures for their welfare and upliftment.[9] The Commission set up under the constitution Sixty fifth Amendment Act, 1990 has so for submitted three reports besides a special report. Out of three Reports submitted so for by this Commission, no report has been placed in either house of Parliament. The reason for this is stated to be delay in preparation of action taken report from various Ministerial/Departments of Government of India and state government as per the existing provisions each Report is to be placed in Parliament along with action taken Report. Government of India has not been able to place the reports are not accessible to members of Parliament and the valuable suggestions/recommendations contained in these reports remain unknown to all concerned and become anfractuous. Commission therefore, recommends that the report of the Commission should be placed before each house of Parliament within three months of its submission. This may be done by suitable amending the clauses of Article 338.

While the Commission has been given wide ranging responsibilities that not only cover the duties of the erstwhile Commissioner for Scheduled Castes and Scheduled Tribes and the Commission for Scheduled Castes and Scheduled Tribes but include matters such as participation in planning process and constitution also on all major policy affecting Scheduled Castes and Scheduled Tribes, the powers with which it is armed are not adequate to deal with the issues effectively.[10] The suggestions are recommendatory in nature and not binding. The Commissions feels that there is an urgent need to retake at the whole issue and give more effective powers to the Commission under the constitution itself.

The Commission is of the view that the thrust given of land reform in 70s has gradually subsided. It has become to notice that substantial numbers of cases are pending in courts in different states for a long time and due to delay in disposal the Scheduled Castes and Scheduled Tribes are not getting physical and legal possession of land. In a number of cases, pattas of ownership tenancy rights have not been given after land allotment. These issues and legal battles over land have also become a cause for crimes and atrocities on the Scheduled Castes, Scheduled Tribes a situation of growing concern. The Commission is strongly of the view that such an amendment will defeat the very purpose and objective for which the Act was promulgated. The Tribal will use their land, face dislocation and even greater hardships in the process. On the other hand action should be taken to restore the land to the Scheduled Tribes and settlers should be given the equal area of land the compensation. The government has receiving recommendations and claims over the past several years for inclusions/ exclusions and other

modification in he orders specifying scheduled castes and Scheduled Tribes. Recently the issue was referred to the Commission by the Ministry of welfare and it was learnt by the Commission that the question of inclusion/exclusion of around 1300 communities is presently under the consideration of the government. The matter was earlier examined by Lokur Committee of Parliament Chaired by Shri AK Chandra. However, the Commission noted with concern that no decision could be taken on the recommendation of the Chanda Committee till date.[11]

It has been observed of late that apart from the association/organization and their leaders are recommending a large number of cases of inclusion of new communities in the lists of Scheduled Castes and Scheduled Tribes. Although these recommendations are based on some ground realities in the context of the present day social set up. There is every possibility of vested interests aiming at the building up of favorable vote banks. After implementation of Mandal Commission Report by the government of India and the introduction of reservation in services for the Other Backward Classes the combined reservations in Central government services have increased to 49.5%. The Supreme Court in the case of Indira Sawheny has ruled that reservation can not exceed 50%. The government should therefore. Be outmost vigilant in examining these recommendations/claims. The aforesaid criteria for inclusion of communities in the list Scheduled Castes and Scheduled Tribes should be followed scrupulously for this purpose. The government of India should set- up a regular body having a number of experts/public representatives to study and examine the issues relating to inclusion/exclusion of communities from the lists of Scheduled Castes

and Scheduled Tribes on a regular basis. The recommendations of such a body should from the basis for taking discussion in the matters. As per the Constitutional provisions, the Commission should also be consulted by the government before taking a final discussion.[12] The scheme seeks to establish model schools with the inherent advantage of the residential complexes and most importantly to provide a demonstration effect through quality education which would motivate further community initiative in education of the Scheduled Castes/Scheduled Tribes girls in the disadvantaged areas. In order to access to what extent issues has been achieved in this direction, the Commission recommends that while opening schools, especially, in the tribal areas specific steps are to be taken to ensure that some schools are opened in the areas where primitive tribal groups are residing and that quality education is provided in these schools up gradation of merit to Scheduled Castes/ Scheduled Tribes student...

The Commission recommends that the state government should follow up the scheme to ensure that trained Scheduled Castes/Scheduled Tribes candidates get gainful employment.[13] In spite of this from higher level educational infrastructure it has been observed that the employment of Scheduled Castes/Scheduled Tribes in different general technical and non-technical is not satisfactory. The situation is alarming in technical and professional courses where most of the Scheduled Castes/Scheduled Tribes seats remained unfilled. The issue was highlighted in the previous reports of the National Commission for the Scheduled Castes/Scheduled Tribes. The specific issues relating to the problems of Scheduled Castes/Scheduled Tribes and cause of their poor intake in different profession and non-professional. The National Commission for

Scheduled Castes/Scheduled Tribes convened a meeting with the vice-chancellor of Delhi University and Principals of colleges in the month of January 1997 and reviewed the position of Scheduled Castes/Scheduled Tribes in teaching jobs? And non- teaching posts. The Commission expressed its dissatisfaction about the representation of Scheduled Castes/Scheduled Tribes in different posts. While receiving the position it is also observed that Delhi University should follow the policy of reservation at admission stage and give encouragement and necessary coaching and financial help to Scheduled Castes/Scheduled Tribes students so that they compete for the teaching position in the Universities.[14]. This applies to other State/Central Universities in the country also. The Commission also stressed that Universities and colleges should set up Scheduled Castes/Scheduled Tribes Cells as per govt. of India directions for monitoring admission in hostels and providing coaching facilities and recruitment in teaching posts. It is further observed by this Commission that the expert group has not made estimates of poverty amongst the scheduled castes and scheduled Tribes population separately. However, based on the methodology of the expert group planning Commission has prepared estimate of Rural and Urban poor among Scheduled Castes/Scheduled Tribes for the year 1993-1994 which are given at Table 5- 2. It is apparent from these estimates that about half of Scheduled Castes population and more than 50% Scheduled Tribes people continue to live in conditions of object poverty. The National Commission for Scheduled Castes and Scheduled Tribes urges upon the government to prepare estimates of the poor among the Scheduled Castes/Scheduled Tribes on a regular basis so that proper policy measures can be taken up by the different Ministries and agencies

involved in the upliftment of Scheduled Castes and Scheduled Tribes. Agricultural labor is characterized by seasonal and low-wage employment with high dependence on monsoon. In the development context of Scheduled Castes and Scheduled Tribes, the problem faced by agricultural laborers deserves immediate attention as they form one of the most neglected classes of rural economy. These steps are likely to reduce the employment opportunities for the educated scheduled castes and scheduled Tribes. Therefore, Ministry of labor should under take a comprehensive survey of the impact of economic reforms on the job opportunities on the whole and in case of scheduled castes and scheduled Tribes in particular.[15]

The Commission reviewed the development programmers of the states of Karnataka, Kerala, Haryana, Himachal Pradesh, Madhyapradesh, Maharashtra, Punjab, Tamilnadu, West Bengal and Chandigarh and discussed inter- alia with the senior officers of the state the implementation of the state the implementation of Tribal sub-plan. The Commission found that a number of states are not providing outlays to the tribal sub-plan in protection to the states of the Scheduled Tribe population. It was further notice by the Commission the funds allocated at the time of Annual plan discussion to the Tribal sub plan were not fully utilized by most of the states. In this connection the Commission on recommends that all the states Scheduled Tribes population percentage in accordance with the recommendation of the working group set-up at the time of formulation of Eight Five Year Plan. The states government should normally monitor the progress of the implementation of Tribal sub plan to ensure that the funds allocated are fully utilized and no diversion of funds take place from TSP to other

sector of development. Infrastructure development in tribal areas particularly in the sector of transport communication, power and vocational education is basic pre-requisite for general Economic development. Conscious efforts to made to ensure that the benefits of liberalization in term that the proper sharing and employment general go to the Scheduled Tribes and Tribes in TSP areas, investment, especially infrastructure in these areas by the private sector should be encouraged with safeguards to ensure that Scheduled Tribes are not exploited and are adequately trained for skill development to ensure employment. Special scheme should be framed for tribal woman, especially for upgrading their skills through transfer of technology with reference to agriculture and other areas populated by them, vocational training, extension of credit, development of entrepreneurship etc. Research on development activities suited to tribal life–style be under taken by all development departments on a large scale in tribal's, particularly bio-medicines, herbs medicine and profit corner by large scale marketing of processed and product based on traditional tribal knowledge should be ploughed back into tribal development by being channeled directly to the tribes concerned form of share in royalty and license fee. The government of Tamil Nadu has a scheme where by all public sector enterprises and large business concern getting loans and facilities from the government have to evolve and apprenticeship scheme where by a specified number of Scheduled Castes and Scheduled Tribes youth, both men and women are given vocational training suited to the work being done in the units. After the training, which is free of cost, these Scheduled Castes/Scheduled Tribes apprentices have necessary to be

absorbed in jobs in those industrial/business units. This should be followed in other States/Union Territories.[16].

A large population of Scheduled Tribes lives in the North East. Because of law and order problems funds allocated do not reach the tribal people. Conscious efforts made to ensure that the funds for development purposes are not diverted for law and order maintenance but are used for providing economic benefits to Scheduled Tribes. This would also be true of other areas e. g. TSP. areas where Scheduled Tribes live and where law and order or other problems exist and funds are diverted for other purposes. Measure for development of units for processing preserving and marketing the produce should taken for value addition. Large scale displacement of Tribal's due to the setting-up of various projects has aggravated the miseries of many tribal communities. The Commission reiterates its recommendations make in the last report that tribal should be made partners in the large development projects located in these areas. Intellectual propriety rights in regard to the process and product relating to various medicinal-plants has assumed urgency in the new liberalized-economic scenario of the country and in the world context. In this regard the Commission recommends as under- Separate statistics regarding flow of credit from institutional sources and be number of Scheduled Tribes beneficiaries should be maintained by the reserve Bank of India, NABARD all commercial Banks, co- operative Banks.

The development of Banking should introduce quarterly monitoring of actual flow of credit to Scheduled Tribes as against target set for the banks and share the information on quarterly basis with the Ministry of

welfare. 10% of credit in priority sector is targeted to weaker sections as per the present policy. However, banks have not been meeting even the target of 10% credit to weaker sections. The flow was 8% in 1992, 8.5% in 1993 and 8.9% in 1994 and 8.7% in 1995. As a matter of fact only 4% of total credit extended by banks at present flows to weaker sections. The department of Banking should ensure not only that higher targets are set specially for advancing credit to Scheduled Tribes but also the these targets are regularly met.

NABARD should open a line of credit of state tribal co-operative federations as in the case of Girijan co- operative, co-operation, Andhra Pradesh. Credit may be extended to Scheduled Tribes on the basis of community land as certified by the village Chief attested by SDO concerned as in many tribal society land ownership is on the basis of the community. The National scheduled castes and scheduled Tribes finance development corporation (NSFDC) has till the end of February, 1996 from its inception extended credit to 1.68, 890 Scheduled Castes, and 33.474 Scheduled Tribes. Thus the coverage of Scheduled Tribes is not adequate. This imbalance has to be remedied and attempts should be made and corrective measures taken by NFDC to that at least one-third of the total credit flows to Scheduled Tribes.[17]

The margin money loan assistance now being given by the scheduled castes development division of the Ministry of welfare should also cover the Scheduled Tribes. These institutions need to be organized and strengthened to enable them to provide support of services for high quality performance and production on seals that free market economy requires.

The following recommendations are made-

Integrated service should be ensured by IAMPS to meet the production marketing and consumption needs of tribal's. Avenues of economic development such as agriculture, animal husbandry, consumer goods and other village industries and handicrafts should also be covered by LAMPS as a part of integrated economic development programs.

The procedure for extending loans to tribal's should be simplified self help group like elder committees may be organized by LAMPS for mobilizing all resources. A network of village level liaison worker may be created by engaging educated tribal youth to act as a link between tribal farmers and LAMPS.

Most of the states have recognized the exclusive rights of the tribal's for collection of MFP. Wherever this has not been done, the concern state governments should take immediate steps to confer such rights to the tribal's salary the state TDCCs or similar government co-operative established for the purpose of helping the tribal's to market their produce should be given exclusive right to deal with MFP items. In the present circumstances, the private traders, who are mainly dealing with these items, exploit the tribal by providing them low price for their produced.

While conferring exclusive rights to the co- operatives to deal in MFP items is an important step, it is also necessary for these co-operative to have a well delineated commercial policy for realizing the market potential of items, co-operative bodies such as Tribal co-operative marketing development federation of India ltd (TRIEED) the states

TDCCs the LAMP Sets, have to come together and workout detailed plans for optimal exploitation of MFP in the country.

These are a number of co- operative bodies already working in the area of procurement and sales of tribal produce, There, is, however, a need to pool their resources and work in tandem for realizing the ultimate objective of providing better remuneration to the tribal for their produce. TRIFED which is an apex co-operative body already has a mandate in the direction and they should take initiative in this matter and come up with their recommendation in this regard. The department of agriculture should introduce monitoring of statute of productivity in TSP as compared/exclusively cultivated by Scheduled Tribes. The trends of productivity emerging out of the statistics should be studied carefully and steps taken to remove the lacunae in order to raise the productivity.

ICAR should focus its research activities specially on crops grown by tribal's under poor resource conditions. Development of coarse grain with longer shelf life hybrid seed for in creased production, organic manure's and farming practices to utilize the biomass available in tribal areas, dry land farming practices will be useful to the Scheduled Tribes.[18] While developing and transferring the agricultural technology for Scheduled Tribes, ICAR should see that their food security is not compromised. Therefore, research studies may focus on those types of agriculture which can ensure food security to the Scheduled Tribes. While tribal economy is almost exclusively agriculture based, majority of tribal farmers still employ age old primitive methods for cultivation. ICAR should study their agricultural practices and the crops grown by them to target research activities and their improvement. Research

Centre may be opened in tribal areas by ICAR. Comprehensive packages should be developed for tribes practicing shifting cultivation. The present Centrally Sponsored scheme of the Ministry of agriculture for shifting cultivators in the North Eastern states may be extended to all other states where Scheduled Tribes practice shifting cultivation.

Special emphasis should be given to development of horticulture and floriculture. transport subsidy for seeds which is available for the farmer in the North-East states should be extended to the tribal farmers on other states because most of them are located in difficult hilly terrain. Compact demonstration of high yielding varieties of seeds and package of scientific agricultural practices should be given priority over distribution of mini kits as for as Scheduled Tribes are concerned.

Scheduled Tribe person especially women, who are landless and depend on the agriculture sector for employment should also be drawn in to the schemes of the Ministry of agriculture particularly in the sphere of training, agricultural tools and equipments used by the agricultural labor etc. for up grading their skills .The Commission recommends that the states should award functional financial and administrative autonomy so that these institutions would function as institutions of self government as envisaged under the constitution. In addition to that, Panchayats at the appropriate levels should be endowed with ownership of minor forest procedure. Since the Panchayati Raj Institutions are yet o stabiles on a firm footing, the Commission recommends that the concerned states should take appropriate measures to translate the legislation in to reality immediately so that tribal have full say in their socio- economic affairs. While the outlays under SCP have been increasing over the year, the

SCP funds have never been fully utilized. The Commission feels that it is not only the flow of funds to SCP from the state plan outlays which should be at least appropriate to the population, but the actual expenditure under the plan has to be brought up to the same level. This was also impressed upon the States/Union Territories Governments during the review meetings.[19]. The Commission recommends that all the states should allocate funds to the SCP in proportion and closely monitor the programmers to ensure their full utilization. The state governments should improve in their SCP on those programmers which are directly relevant for the development and welfare of the Scheduled Castes. The Commission recommends that all the state governments should open separate budget head for SCP allocation immediately to prevent diversion and miss-utilization of funds earmarked for Scheduled Castes and that the department concerned with Scheduled Castes welfare and development should be made responsible as nodal agency for formulation and implementation of SCP for better impact of the programmed the state should ensure that all the schemes under SCP people. More funds should be allocated to the scheme in the core sectors like agriculture, animal husbandry, dairy development, leather, weaving textiles, handlooms etc. by formulating appropriate schemes under the SCP. The Commission recommends that the Central government should regularly provide a suitable step-up to the total amount of SCA. For special component plant to keep up with not only the rising prices but also to enable the states to expand their activities for the welfare of the Scheduled Castes. In this connection the Commission urges upon all the states to ensure timely release of funds to the implementing agencies so that the scare funds do not remain idle. Commission reiterates its

recommendation made in its previous Report that the Ministry may consider providing additional SCA as an incentive to the states which perform better in utilization of special Central Assistance during the preceding year. The Commission also suggests that Ministry may examine in depth the cases of same of the defaulting states to identity the bottlenecks in the utilization of the SCA for special component plan. The Commission further recommends that the Ministry of finance should lay a separate report on special component plan in the Parliament while presenting the Annual Budget of the Union government as same of the state government are doing at the time of presenting their Budgets in the Assemblies. The Commission recommends that Ministry should take up a comprehensive survey to identity the problem of drinking water among solve it. The development is required to collect the information pertaining to the Scheduled Castes/Scheduled Tribes beneficiaries under this programmed and also other programmers relating to the women development and incorporate them in its annual report for evaluation of these programmers by the National Commission for Scheduled Castes and Scheduled Tribes. Since NSFDC is the apex body for channeling the development programmers. For Scheduled Castes/Scheduled Tribes the Commission feels that the Central government should consider providing bank states to the corporation so as to augment its resource base and expand the horizon of its operations in the field of Scheduled Castes/Scheduled Tribes upliftment.[20] The Commission recommends that there should be regular flow of funds to SCDCs like that to DRDA. The Commission feels that Penalizing the SCDCs by NSFDC should be stopped Since, in most of the cases, dealing in utilizing NSFDC funds is on account of late or non- receipt of

funds from state government, the funds allocated to the corporation may be released by the Govt. of India to this corporation directly In come ceiling for eligibility of NSFDC scheme (costing up to Rs-3 lakes) is Rs, 22000/-pa.It is not possible for poor person to provide seed money @ 57% to 87% of the project cost. It is suggested that income ceiling should be removed. Hence, seed money to the beneficiary should be provided by the NSFDC/ SCDC or out of SCA. Therefore, Banks may, at the beginning of the financial year, bring out a list of viable schemes so that proposals sent by the corporation are not rejected. Corporation should be extended to wage employment also a not restricting to self-employment schemes. NSFDC could assist the corporation in providing training to them, NSFDC and state Scheduled Castes/Scheduled Tribes Corporation should be given the states of banking institution. It is suggested assets of the beneficiary may be hypothecated to the corporation and state's guarantee should not be insisted upon. The Commission urges these financial institutions of the schemes and total advances made by them for the benefit of Scheduled Castes/Scheduled Tribes. The commends that the whole issue of reservation in services should be given a legal basis with any further delay, and the Bill may be introduced in the Parliament by the Ministry should that a Penal clause is incorporated in the proposed enactment, providing action against official responsible for deliberate miss- use, miss-interpretation or non-implementation of reservation policy. Alternatively, the President may consider issuing an ordinance so that the constitutional safe guards provided to the Scheduled Castes and Scheduled Tribes to have clear, unambiguous legal states.[21]

In this scenario it becomes imperative to think of new and effective planning strategy for the development of the weaker sections of the population. This is a matter of serious concern and the concerned universities, UGC and Ministry of human Resource development should try to find out the causes of poor representation of these communities in these courses. It may, therefore, be advisable for the planners to focus their attention particularly on this age-group and provide for larger investments in the areas of education, nutrition, health, etc. in order to prepare them better to face challenges in the subsequent years as a part of the mainstream Indians. Considering the fact that a majority of the Scheduled Castes/Scheduled Tribes population live in rural areas where incidence of poverty is more acute, the thrust of planning should be directed towards this significant rural section of their population.

First Annual Report the Commission had recommended "that all States/Union Territories should make provisions in the divisible component of the plan outlay for the TSP not only in proportion to the Scheduled Tribes population but in a higher proportion than their population percentage in view of their extreme backwardness and their having been deprived of developmental benefits in the past" The Commission strongly reiterates its earlier recommendation and is of the view that the level of achievement of the previous year should not only be sustained but raised in the subsequent plan.[22] The Commission recommends that those state governments which have not been able to step up outlay under their respective TSP during the period 1993-1994 should rectify the position in the subsequent plan periods. The Commission feels that it is in the interest of Scheduled Castes that only outlays under the SCP are stepped up, efforts in utilization of all the

funds is the need of the hour. The Commission desires that situation should be monitored continuously and the desired level of outlay and expenditure reached expeditiously. The Commission recommends that earnest efforts should be made by NSFDC in coordination with the state level agencies to identify more Scheduled Tribe beneficiaries in future. The Commission further recommends that the Central Ministries/ Departments in their annual reports in addition to giving information about representation of Scheduled Castes and Scheduled Tribes in posts and services, may also give an account of the programmes/schemes under taken by them for the welfare and development of Scheduled Castes and Scheduled Tribes and physical and financial achievements under them during the period.

The Commission recommends that under the EAS also targets should be fixed for the coverage of Scheduled Castes and Scheduled Tribes as they constitute bulk of the rural poor. In all the poverty eradication programmers the essence of success lies in the proper identification of the poorest and the Commission recommends that this should be given maximum attention and care. The Commission recommend that it will be desirable to have as nearly uniform ceiling limits as practical in all the states which may also make efforts to bring down the land ceiling as for as possible. State governments having sizeable acreage of land declared surplus due to the enforcement of ceiling limits but are not able to allot it due to litigation may immediately under take an exercise and identity and segregate such as cases and set- up special Land Tribunals to expeditiously dispose of these cases with in a specified time limit If necessary monitoring cells may also be set up to watch the disposal of cases involved in litigation. The Commission therefore, recommends

that the state government may desist from such a practice and may distribute the surplus area only to eligible beneficiaries among the rural poor including scheduled castes and Scheduled Tribes.[23]

While the Commission endorses the above suggestion it is also of the view that senior officers of the district must ensure that the area declared unit for cultivation is actually so. It is understood that the ministry of Rural Development has requested the state governments to conduct sample checks to see whether the area declared unit by the lower level functionaries is really unfit. The Ministry has also suggested to allot such area for social forestry. Raising of fodder etc., and also to improve fallow land by making available financial assistance to the allotters under various rural development programmers. All state governments may requested to carryout survey and settlement operations immediately to put on record all the tenants/sharecroppers and give them ownership rights/or protect their rights by enacting suitable legislation/ amending the existing one's if already exist removing all possible loopholes/impediments to frustrate the efforts of vested interests.

If possible, state governments may also be requested to under take special drives for a specific time period to record the interests of the tenants. A regular system of monitoring at all the levels Tahsil, Sub-division, District divisional and state level should be evolved with active participation of the beneficiary organizations. The Ministry of Rural Development at the Centre should review the progress at least once a year at level of Revenue Minister/ Secretaries. Tenancy litigation can be given to special tribunal constituted for the purpose. Though some of the states have made quite a good progress in consolidating the agricultural

holdings it appears that the governments of states where this scheme has not made much progress will have to take special measures to complete the consolidation operations. The Commission agrees with these suggestions and urges the government to take expeditious action in implementation these suggestions. The Commission therefore, recommends that Ministry of Rural Development may urge upon the concerned state government to report the progress in respect of alienation, restoration and possession given to the tribal's in respect of their alienated lands, periodically and regularly as prescribed by the Ministry. Progress in respect of the programmed of restoration of alienated tribal land to the concerned persons is very slow. State government of Assam may be requested to expedite the same and also furnish complete and up- to date information to the Ministry of Rural Development as well as this Commission. All states reporting cases of transfer of tribal land to non-tribal's must take immediate adequate measures to identity cases of tribal land alienation and set-up special Tribunals to expeditiously dispose of such cases, fixing responsibility on officers to restore and given possession of the restored alienated land to the concerned tribunals. The Commission therefore, suggests that all state government should send suitable directives to the field officers is promptly and duly respond to the communications from this Commission particularly relating to various grievances of Scheduled Castes and Scheduled Tribes .

If unduly long time is taken even in furnishing facts of the various cases, the time taken for regressed of the grievances could be indefinite The relevant provisions of the University Grant Commission Act and the University Acts should be suitably amended to achieve the objective of

providing reservation for Scheduled Castes and Scheduled Tribes at various levels as allowed by the government of India in terms of the Constitutional provisions. The Commission also recommends that similar steps may be taken by the State Universities. It is further recommended that uniform instructions need to be compiled by the UGC with detailed guide line to be followed by the Universities in the matter of recruit meant/promotion and issued to all the Universities for strict compliance. Suitable return also needs to be prescribed for submission to the UGC by the Universities to ensure compliance of the guidelines and instructions. It is recommended that at least 75% of the posts of sweepers should be filled only by candidates belonging to communities who are traditionally engaged in this profession and may be thrown open to others in the event of non- availability of candidates from these communities. Similarly, a part of the vacancies reserved for the scheduled caste in group C&D posts may also be earmarked for candidates belonging to these communities to uplift this section of the society which is still continuing at lowest rung of the ladder. In the case of Nationalized and public sector Banks, where part time sweepers are engaged for branches, there are no such openings for them This needs to be reviewed by the Banking division, Department of Economic Affairs, to ensure diversification of sweepers to other group D posts like messengers in terms of the government of India policy. It is recommended that the Ministry of Commerce may take immediate steps to ensure that the posts reserved for Scheduled Castes and Scheduled Tribes, abolished before their filling up through advertisement issued earlier, must be restored to Scheduled Castes and Scheduled Tribes without further loss of time. Action needs to be taken to fix

responsibility for violating the government policy. Action is also called for against the management for ignoring the well considered advice of the Commission. The Commission recommends that the matter may be reviewed by the Ministry concerned which may also ensure that such injustice is not done towards Scheduled Castes/Scheduled Tribes officers to future. The Commission recommends that promotions of the Scheduled Castes officers should be reviewed to allow them the benefit retrospectively from due dates.

The Commission recommends that the committee set–up under the chairmanship of the Minister for Social Welfare should earnestly complete its task and submit a report at the earliest, as promised by the government of Karnataka in their communication of 02-09-1994. The Commission therefore, recommends that verification of Scheduled Castes/Scheduled Tribes certificates should be completed in each case within three months to avoid harassment to Scheduled Castes/Scheduled Tribes candidates. Working of the Scheduled Castes and the Scheduled Tribes Prevention of Atrocities Act, 1989. The Commission recommends that the Ministry of welfare may get sample studies conducted by the Tribal Research institutes, Universities and other research organizations to evaluate the working of the Special Courts dealing with atrocity cases and suggest remedial measures to overcome the problem faced by these courts for ensuring speedy trial of these cases, and delay is minimized in awarding punishment to the guilty the Commission further recommends that the remaining State Governments/ United Territories administrations may set-up Special courts exclusively to deal with atrocity cases. In order that timely preventive measures could be taken to check incidents of atrocities resulting in loss of life

and property it is desirable that all the State Governments/Union Territories administrations conduct periodic surveys and identity atrocity-prone areas for taking preventive measures. On one hand, the Quota of reservation is not being fulfilled and on the other hand, the existing privileges and concession available to Scheduled Castes/Scheduled Tribes employees are being withdrawn by the govt. In fact the matter is so serious with such wide repercussions that Commission has decided to present a special Report to the President of India The Commission has recommended to the government to have special arrangements on the line of CAT to try the cases on reservation taking them out of the jurisdiction of the general courts. [24].

The efforts therefore, would have to be continued to identify the causes and weaknesses of different programmes witch come in the way of their educational development special measures to improve the literacy and educational level should be taken up through time bound programmer with quality inputs which would help in improving standards at an accelerated pace so that the gaps can be bridged in the next to 5 to 10 years. The Commission that the grants drawn are not property utilized, so far no adequate evaluation or monitoring of utilization of grants provided under Article 275 (1) seems to have been done. There is need to conduct inspections by Ministry of Welfare about the utilization of TSP and SCA funds.

The Commission is of the view that all the Central Ministries Departments should formulate TSP programmers and allocate funds in proportion to population. The Commission further recommends that the central ministries in their annual reports, in addition to giving

information about the representation of Scheduled Castes and Scheduled Tribes in posts and services, should also give an account of the programmes/schemes undertaken by them for the welfare and development of Scheduled Castes and Scheduled Tribes along with an appraisal of physical and financial achievements during the period

Personnel policy should consciously aim at sensitizing public servants, especially officers in the Indian Administrative Service and the Indian Police Service to the special needs of women, the Scheduled Castes, the Scheduled Tribes, minorities, and other weaker Sections. The Commission recommends that the Civil Services Boards, recommended to be set up under Chapter 6 for considering promotions and placements, should be directed to specifically consider the performance of officers in promoting the welfare of Scheduled Castes, Scheduled Tribes and other deprived categories. When officers are being considered for promotion and placement economic agencies/ ministries, weightage should be given to officers who have worked conscientiously and efficiently to implement constitutional values and norms under the law and rules and regulations for the welfare, development and empowerment of the above disadvantaged categories and those who have failed in this and those who have not worked at least for five years in the areas and sectors pertaining to these categories should be excluded from placements in economic ministries/agencies. For this purpose, the Commission recommends that provision be made for Social Justice Clearance before an officer of class I or class II is promoted.[25].

Reservation for Scheduled Castes and Scheduled Tribes should be brought under the purview of a statute covering all aspects of

reservation[26], including setting up *Arakshan Nyaya Adalats* or Tribunal to adjudicate upon all cases and disputes pertaining to reservation in posts and vacancies in Government, Public Sector, Banks and other financial institutions, Universities and all other institutions and organizations to which reservations are and become applicable. These Tribunals should have the status of High Courts, appeals lying only to the Supreme Court. These Tribunals should have their main Bench at Delhi and other Benches in the States. The Chairperson, Vice-Chairperson and other Members of the Tribunal and its benches should be selected on the basis of their record in the implementation of Reservation in their earlier positions. The statute should, *inter alia*, have a penal provision including imprisonment for those convicted of willfully or negligently failing to implement reservation; and the proposed statute and related provisions should be brought under the Ninth Schedule to the Constitution. The Commission further recommends that the three Constitutional amendments enacted in the last two years to undo the harm done in 1997 to the long pre-existing rights of Scheduled Castes and Scheduled Tribes in reservations should be put into effect forthwith. The Central and State Governments should amend the executive orders issued in 1997 regarding the roster and restore the pre-1996 roster. This should also be brought into the purview of the statute mentioned above. The Commission recommends that Reservation for backward classes should also be brought under a statute which, while containing the specificities of reservation for Backward Classes should also contain provisions for *Arakshan Nyaya Adalats* or Tribunal for providing Justice in Reservation, penal provisions etc. as

recommended in the case of the statute in respect of Scheduled Castes and Scheduled Tribes.

The Commission recommends that It should be mandatorily stipulated in the Memoranda of Understanding (MOU) of privatization or disinvestment of public sector undertakings that the policy of reservation in favour of Scheduled Castes, Scheduled Tribes and Backward Classes shall be continued even after privatization or disinvestment in the same form as it exists in the Government and this should also be incorporated in the respective statutes of reservation. As a measure of social integration there should be a half per cent reservation for children of parents one of whom is Scheduled Castes/Scheduled Tribe and the other parent is non-Scheduled Castes/non-Scheduled Tribes and this reservation should be termed as reservation for the Casteless. In higher judiciary, the representation of judges from Scheduled Castes, Scheduled Tribes and other backward classes is inadequate. Out of 610 judges in the High Courts, there are hardly about 20 judges belonging to the Scheduled Castes and the Scheduled Tribes. In S.P. Gupta's case and Supreme Court Advocates on Record case, popularly known as the First Judges' Case and Second Judges' Case respectively, the Supreme Court upheld the constitutionality of the circular letter addressed by the Union Law Minister requesting the State Governments and the High Courts to recommend the names of competent candidates belonging to the Scheduled Castes, the Scheduled Tribes, women and Other Backward Classes.

In view of the above, and also taking into account the weighty opinion against the formal introduction of reservation in the higher judiciary,

and the fact that over fifty years, the progress of education, however tardy, has certainly produced adequate number of persons of the Scheduled Castes, Scheduled Tribe and Backward Class in every State who possess the required qualifications, having necessary integrity, character and acumen required for Judges of Supreme Court and High Courts for appointment as Judge of the superior judiciary, a way could and should, therefore, be found to bring a reasonable number of Scheduled Castes, Scheduled Tribes and Backward Classes on to the Benches of the Supreme Court and High Courts in the same way in which, in practice, it is found is followed in respect of advocates from different social segments/regions of the country/states or different religious communities so that on the one hand the overwhelming opinion against formal reservation in the Supreme Court and High Courts is respected and on the other hand, the feeling of alienation of the vast majority of Indians comprising Scheduled Castes, Scheduled Tribes and Backward Classes that, in spite of having persons of requisite caliber and character among them, they are being ignored in the appointment of Judges, is resolved.

The Commission recommends that there should be reservation for Scheduled Castes, Scheduled Tribes and Backward Classes (including BC minorities and especially More and Most Backward classes), with a due proportion of women from each of these categories in the matter of allotment of shops under the public distribution system, and other allotments like petrol stations, gas agencies, etc. for distribution of commodities by public authority. There is need for support mechanism to help entrepreneurs among these deprived sections to help them to come up in these business ventures. [27].

In the context of PDS, taking note of people who do not have purchasing power even to pay for subsidized food-grains available through PDS, the Commission recommends that massive programmers of employment be undertaken and expanded to cover all such people and provide them employment at statutory minimum wage fixed for agricultural labourers at least for 80 days in the year over and above the unsteady employment they normally have.[28]Inclusion of Right to Work as a fundamental right has been recommended in this Report and this will provide the necessary constitutional base and support for this program.

Establishment of Residential Talent Schools and Protection of Educational Interest of Weaker Sections .Education was envisaged as one of the most powerful engines for the social and economic liberation of the Scheduled Castes, Scheduled Tribes, and Backward Classes and for bringing about social equality and empowerment of these categories. The mandate of Article 46 of the Constitution is very clear on these aspects. Yet the best education has not been brought within the reach of these sections. In the context of realities, it is imperative to set up residential schools of high quality for Scheduled Castes, Scheduled Tribe and Backward Class, each of which is not a single community but hundreds of communities, recognized and categorized together on the basis of criteria like untouchbility, and social backwardness. Unless such schools are set up for them, the goal of educational equalization and quality education will continue to elude them and the constitutional mandate envisaged by Article 46 will continue to be flouted. This Commission, therefore, recommends the establishment of residential schools for Scheduled Castes and Scheduled Tribes in every district in the country– one each for Scheduled Castes boys and Scheduled Castes

girls, and Scheduled Tribe boys and Scheduled Tribe girls, as one item of an important package of comprehensive measures required for the development and empowerment of Scheduled Castes and Scheduled Tribes. Similarly, the Commission recommends that residential schools should be set up for the Backward Classes in every district, one each for Backward Class boys and Backward Class girls, including minorities who belong to Backward Classes and with special attention to More Backward and Most Backward classes among Backward Classes. The proportion of the students of the specific category of weaker sections (say 75 percent) and of other social categories (say 25 per cent), the principles of location, methodology of covering the Minority, Backward Class, phasing and funding, mode of selection of the candidates, management etc. should be for implementation.[29] This system has got the support of the precedent and experience for the last two decades in Andhra Pradesh state, providing ground for hope in this important and indispensable measure. In addition, the Commission recommends that it is also necessary to see that the Scheduled Castes, Scheduled Tribes and Backward Classes especially the more and most Backward Classes of Backward Classes from poor and middle-class families get due benefit of good and prestigious private educational institutions in the country as well as in foreign educational institutions at all levels and in all disciplines, at state cost.[30]

The Commission feels that the time has come to build up the educational coverage of Scheduled Castes and Scheduled Tribe in technical, vocational, scientific and professional disciplines, with appropriate incentive and support and with special budgetary outlays so that a reservoir of highly educated professional, scientific and technological

manpower is built up among the Scheduled Castes and Scheduled Tribes and also the More and Most Backward Classes of Backward Classes, commensurate with their population proportion. Incentives should be offered to students to prepare for such courses of study. Only a massive transfer of resources to the educational programmers for the scheduled castes and scheduled tribes will enable us to achieve the kind of quantitative expansion needed to bring these communities on par with others in terms of skills and knowledge base to engage with the modern world. It is only then that they would be in a position to compete on the basis of their own strength and rise to the leadership role in different spheres of public life. The Commission recommends that this aspect of measures for building up a reservoir of highly educated professional, scientific and technological manpower's among these categories in population equivalent proportion should be borne in mind along with its earlier recommendations regarding residential schools of high quality and elementary education, and provisions and outlays should be made accordingly.

Social policy should aim at enabling the Scheduled Castes, Scheduled Tribe and Backward Class (including Backward Class minorities and especially the More and Most Backward Classes among Backward Classes) and with particular attention to the girls in each of these categories to compete on equal terms with the general category. This was always necessary but this becomes more important and increasingly urgent in the context of a knowledge society that is emerging. Reservation has helped the above deprived categories to enter state educational institutions from which they had been debarred and/or otherwise excluded in the past. Reservation continues to be necessary

since these adverse factors have not ceased to exist. But with the growth of high quality educational institutions built up by the wealthier sections, almost entirely drawn from non-Scheduled Castes, non-Scheduled Tribe, non- Backward Class categories, as a high quality stream distinct and separate from the state educational system, it becomes important to ensure that other measures in addition to reservations are introduced. That is why the Commission has recommended establishment of high quality residential schools for boys and girls of these categories in every district, and ensuring a share for boys and girls of these categories from poor and middle-class families, at state cost, in private institutions of excellence created for themselves by the wealthier sections and also a share for these disadvantaged categories in foreign educational institutions again at state cost. Without these measures, along with the Commissions recommendations on elementary education, the gap between the Scheduled Castes, Scheduled Tribe and Backward Class on the one hand and the rest of society will inexorably continue and even be widened.

Liberation and Rehabilitation of *Safai Karamcharis* (Scavengers) manual scavenging is a degrading practice. The Commission recommends that the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, be strictly enforced to bring to an early end to this degrading practice so offensive to human dignity without abridgement of the employment and income of existing *Safai Karamcharis*. Automatic applicability of the Act to all states should be brought about by the amendment.[31] further, the specifics and details of the abolition of the manual scavenging system and the liberation and rehabilitation of *safai karamcharis* and protection of *safai*

karamcharis during the transition period should be made including its incorporation in the System of Social Justice. Limitations placed on the National Commission of *Safai Karamcharis* should be removed and it should be given the same powers and functional autonomy as is being enjoyed by the National Human Rights Commission; it should be adequately equipped to achieve its objective of total liberation and full rehabilitation of *Safai karamcharis*. This should form an integral part of a National Sanitation Policy-cum-National Social Justice Policy.

Socio-economic Development and Empowerment of Scheduled Castes, Scheduled Tribes and Revitalisation of Special Component Plan. For comprehensive development and empower-ment of Scheduled Castes and Scheduled Tribes, the Government have followed, over the last 25 years, a policy of earmarking a proportion of total plan outlay, not less than the proportion of the population of Scheduled Castes/Scheduled Tribes in India as a whole (for the central plan) and in each State (for State Plan). It has also been formally decided many years back that population equivalent proportion of the total plan outlay of the Centre and of each State should be for the Special Component Plan (SCP) for the Scheduled Castes and Tribal Sub-Plan (TSP). Further the concept has been that programmers and schemes in accordance with the developmental needs and priorities of the Scheduled Castes and Scheduled Tribes should be formulated under the SCP and TSP. This commendable policy has no doubt helped but has not been able to bring about the required qualitative change in the conditions of the Scheduled Castes and Scheduled Tribes. Adequate Plan outlays and corresponding budgetary allocations as required for SCP and TSP were never made for want of seriousness of purpose in line with Article 46 of the

Constitution, in the process of plan formulation and implementation. In recent years, even the aggregate allocations for the development of Scheduled Castes and Scheduled Tribes have declined as a proportion of the total plan outlay. Another serious problem is that the allocated amounts are not fully utilized due to lack of coordination between various Departments and want of seriousness and sincerity. Further funds earmarked for SCP and TSP allocated for the development of Scheduled Castes and Scheduled Tribes often have been diverted in spite of specific policy decisions and guidelines from the Centre as well as States against such diversions.

The Commission strongly feels that this bleak situation will continue to be evil to the Scheduled Castes and Scheduled Tribes and the nation unless appropriate new institutions are created to take charge of the full quantum of outlay of SCP and TSP (i.e. outlay not less than the population equivalent proportion of the total plan outlay of the Centre/each State) and manned by competent experts of Scheduled Castes and Scheduled Tribes and others genuinely working for them, to formulate Plans in accordance with the developmental needs and priorities of the Scheduled Castes and Scheduled Tribes and ensure that these plans are implemented effectively. This will help to take planning and implementation of development of Scheduled Castes and Scheduled Tribes Out of the hands of those who have no interest in them. This new institutional system should consist of an integrated network of National Development Council (NDC) for Scheduled Castes and Scheduled Tribes, and National Scheduled Castes and Scheduled Tribes Development Authority, State Scheduled Castes and Scheduled Tribes Development Authorities and District Scheduled Castes and Scheduled

Tribes Development Authorities. Out of the total plan outlay of the Centre and of each State, before Sectoral allocations are made, an outlay equivalent to the population proportion of Scheduled Castes and Scheduled Tribes should be placed at the disposal of the National and respective State Authorities, as the corpus of SCP and TSP for formulation of plans in accordance with the needs and priorities of Scheduled Castes and Scheduled Tribe. For this[32]. The scheme should also be taken up on a massive scale. This will at one stroke remove the various limitations and difficulties faced by the SCP and TSP and create a powerful, integrated instrument of social transformation based on the vision of economic liberation, educational equality and social dignity of the Scheduled Castes and Scheduled Tribes.

One of the basic issues continues to be accessed. It is significant that land reform as a political and economic issue of major importance has ceased to occupy the central place as it occupied in political discourse not too long ago. The statistical data compiled for the background paper clearly shows that the vast majority of the Scheduled Castes population remains landless agricultural laborers and marginal peasants and the Scheduled Tribes have been steadily losing their land and adding to the landless agricultural labor force. Without access to productive assets and firm legal protection for their title, ownership, possession and peaceful enjoyment, it is difficult to see how there can be a real and significant change in the position of the scheduled castes and scheduled tribes in the village society. In addition, we need to inject new vitality in the operation of minimum wage legislations to benefit agricultural labor. The Commission recommends that land reforms involving distribution and allotment of lands from different sources (i.e. Government lands not

required for genuine public use, Blooding lands, ceiling surplus lands, etc.) to the Scheduled Castes and Scheduled Tribes along with supportive mechanism in the shape of supply of subsidized capital and credit and extension be made, and development of these lands through irrigation and other means to be undertaken[33]. Similarly, with regard to enforcement of the Minimum Wages Act for agricultural labour, the methodology recommended . Strong legal action is needed to prevent alienation of lands belonging to the tribal communities and effective prior rehabilitation of Tribal before displacement due to developmental projects. Additionally the tribal communities have to be associated with the management of forest resources, for not only their livelihoods, but also for protecting their way of life and cultural identity which are indissolubly linked to forests[34].

In the matter of harmonizing the preservation of the land ownership of Scheduled Tribes, industrial and other development.[35]

The tribal communities are repositories of myriad cultural traditions– tribal lore, the arts and crafts, music, dance, and design, textiles, metallurgy and eco-friendly technology. There is a tremendous range of attainment in all these different aspects of their heritage. Knowledge of flora and fauna, herbal medicine and therapies, time-reckoning, animal husbandry, veterinary practices etc. represent additional areas of specialized knowledge in tribal societies in different parts of the country. It is of crucial importance that these variegated elements of tribal cultural heritage are protected from being overrun or expropriated. The Commission recommends that special safeguards should be provided to protect the wholesome traditions of the cultural heritage and

of the intellectual property rights of the tribal people. This is no less important for the tribal identity than the effort to prevent alienation of land and land-related institutional rights of tribal people.

As a means of improving the administration of the areas inhabited by the Scheduled Tribes and promoting local autonomy, the Commission recommends that all areas governed by the Fifth Schedule of the Constitution should be forthwith transferred to the Sixth Schedule extending the applicability of the Sixth Schedule to tribal areas other than the North Eastern States to which alone the Sixth Schedule now applies, and all tribal areas which are neither in the Fifth Schedule nor in the Sixth Schedule should also be brought forthwith under the Sixth Schedule. Special programmers of training and orientation for the elected representatives of the Sixth Schedule bodies and related officials should be undertaken and conducted regularly in order to secure the full potential of local developmental and administrative autonomy envisaged under the Sixth Schedule.

The Commission took into account the changing parameters of State action in the context of the tectonic shift toward globalization and liberalization. At present Scheduled Castes and Scheduled Tribe employees in the private sector are numerically insignificant except at the shop floor level. This is also true of more and Most Backward Classes to a considerable extent including Backward Class Minorities and women, particularly women from these sections. It is obvious that in the context of the severe bias against the Scheduled Castes and Scheduled Tribes and also in varying degrees against Backward Classes, women and minorities shared by the captains of the private sector with

the rest of the advanced sections of the society, they will not, left to themselves, be able to provide adequate space for the Scheduled Castes and Scheduled Tribes and also to Backward Classes, women and Minorities and meet their just aspirations. It is necessary for the Government to step in firmly and clearly, if the gap is to be bridged between private prejudices, camouflaged in the name "efficiency" on the one hand and the just aspirations of the Scheduled Castes, Scheduled Tribe, Backward Class including Backward Class minorities, and women..[36]

Further the Government should examine other economic and activity sectors at every level of each such sector and see whether the Scheduled Castes and Scheduled Tribes are adequately represented in each of them. If they are not, remedial measures either through reservation or through other means should be undertaken to see that they are adequately represented at every level in every such sector. Similar action should also be taken with regard to backward classes including Backward Class minorities, especially more and Most Backward Classes and women of all categories. This is possible, if non-economic prejudices are excluded, without watering down the genuine requirements of efficiency.

Agriculturists and other traditional producing classes face certain adverse effects of sudden and unprepared exposure to the regimes of WTO, IPR, etc. In order to protect them from these adverse effects while at the same time to secure the benefits of those regimes, a national convention should be convened involving Ministers in charge of Ministries connected with globalization and Ministers in charge of Agriculture and other sectors of traditional produce and authentic

representatives of the peasant organizations as well as organizations of other traditional producing classes, to identify remedial Steps arrive at a consensus about them and these should be implemented quickly. There should be a continuing mechanism involving all these to continuously monitor implementation and corrections and modifications required from time to time.

Further agriculturists and many other traditional producing classes suffer from the adverse effects of natural calamities like drought, cyclone, floods, etc. A similar national convention should identify the measures required to protect them from such adverse effects of natural calamities including crop insurance, preparedness etc., arrive at a consensus about these measures and institute a continuing machinery of continuous monitoring and corrections and modifications.

Legal protection for security of life and human dignity

The Commission recognizes that on the one hand there should be an effective legal structure to protect the Scheduled Castes and Scheduled Tribes against atrocities and discriminatory practices based on untouchbility and along with such structure and its efficient functioning, there should also be attitudinal change of a profound nature in the general society.

With regard to legal structure, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 needs to be strengthened and its effective enforcement is to be ensured. This include the establishment of special courts exclusively to try offences under this Act, inclusion of certain crimes in the list of atrocities, certain penal provisions where

they do not exist, appropriate plugging of certain loopholes and comprehensive rehabilitation of victims and so on[37]. For this purpose, the Commission recommends.

Regarding untouchability which continues to be widely prevalent in old classic forms as well as in new forms in line with modern developments, multi-pronged measures covering human rights education, moral education, building up of a strong democratic movement against untouchability and effective punitive action under the Protection of Civil Right Acts, 1955 (PCR Act) are required. In view of this, the Commission recommends the adoption of the entire gamut of measures.[38]

Science and Technology

The National Science and Technology Commission referred to in Chapter 6 should also promote measures for extending the umbrella of modern science and technology and higher scientific and technological research to cover Scheduled Castes, Scheduled Tribes and Backward Classes, women and other poor sections of the society, devise means by which they can also be introduced into this field and potential talent among them identified and nurtured so that they also are enabled to contribute to the advancement of higher scientific and technological research in the country and so that there is no feeling that they are shut out from this important area on account of non-scientific prejudices strengthening of constitutional provisions in favour of Scheduled Castes and Scheduled Tribes

The Constitution of India was shaped by the guiding hand and genius of Dr. Babasaheb Ambedkar with the goodwill of Pt. Nehru, Sardar Patel and

Dr. Rajendra Prasad and other stalwarts of the Constituent Assembly under the inspiration of Mahatma Gandhi and contains distinct provisions for the protection and promotion of the interests of Scheduled Castes and Scheduled Tribes, Backward classes, women, minorities and other weaker sections so that an egalitarian society could be built up. If these provisions had been implemented in the right spirit, the problems are devilling the masses of the people and country as a whole should have disappeared by now. Taking the realities of the recent decades and the failure to implement these constitutional provisions, the Commission considers it necessary to strengthen these provisions by amendments, transfer of certain articles to Part III Fundamental Rights, and certain other similar steps. Accordingly, the Commission recommends amendment to the Constitution.[39]

Minorities

The general argument for creating a better cultural, economic and educational environment for protection of rights and of development of disadvantaged sections applies *mutatis mutandis* to the religious and linguistic minorities. Constitutional safeguards already exist. What is needed is a major break through in educational and economic spheres. In this context, it is also to be noted that the bulk of the religious minorities consist of castes/communities which are included in the list of socially and educationally backward classes. They are mainly counterparts of

Hindu Backward Classes and to some extent of Hindu Scheduled Castes.

The Commission recommends that-

(a) Steps should be taken for improvement of educational standards amongst the minority communities. Special programmers should be drawn up after the widest consultation with the leaders of minority communities including leaders of BCs, Scheduled Castes and Scheduled Tribes among Minorities from academic, professional, business, and socio-political spheres and from low-occupational spheres. Such programmers should be generously funded. Only educational and cultural advancement will help the cause of national integration as well as raise the capabilities of the communities. This is the high road to national cohesion.

(b) At present the political representation of minority communities in legislatures, especially Muslims, has fallen well below their proportion of population. The proportion of Backward Classes among them is next to nil. This can lead to a sense of alienation. It is recommended that in situations of this kind, it is incumbent for political parties to build up leadership potential in the minority communities, including Backward Classes, Scheduled Castes and Scheduled Tribes among them, for participation in political life. The role of the state for strengthening the pluralism of Indian polity has to be emphasized.

(c) Backward classes belonging to religious minorities who have been identified and included in the list of backward classes and

who, in fact, constitute the bulk of the population of religious minorities should be taken up with special care along with their Hindu counterparts in the developmental efforts for the backward classes. This should be on the pattern of the approach to the development of Backward Classes formulated by the Working Group for the Development and Empowerment of Backward Classes in the Tenth Plan referred to separately under Backward Classes. This will, on the one hand, help the development of the masses of religious minorities and on the other hand help bring about national cohesion, and

(d) An effort needs to be made to carry out special recruitment of persons belonging to the underrepresented minority communities in the police forces of States, para military forces and armed forces. This will in still confidence among minority populations as well as help them to develop responsible attitudes toward security issues confronting the nation.

There exist in every State minority people speaking languages other than the State language. In other words linguistic minorities, who suffer from the disadvantage of education being available only in the language of the State concerned. Keeping in view the psychology of learning, the Commission recommends that in every State the linguistic minorities should be provided the facility of having instruction for their children at elementary stage in their mother tongue. Numerous recommendations in this behalf and other matters have been made by the Commissioner for Linguistic Minorities in his successive Annual Reports regarding the various problems faced by the linguistic minorities. The Commission

recommends that the Ministry of Social Justice and Empowerment and the Ministry of HRD should collate all these recommendations and see that substantive action is taken on each of them.

The Secretary, Ministry of Social Justice and Empowerment requested the Commission to examine the relevance of the Office of the Commissioner for Linguistic Minorities under article 350B. After considering the matter, the Commission felt that no change in article 350B was desirable.

Denotified Tribes/Communities and Nomadic and Semi-nomadic Tribes/Communities.

The denotified tribes/communities have been wrongly stigmatized as crime prone and subjected to high handed treatment as well as exploitation by the representatives of law and order as well as by the general society. Some of them are included in the list of Scheduled Tribes and others are in the list of Scheduled Castes and in list of backward classes. The special approach to their development has been delineated and emphasized in the Reports of the Working Groups for the Development of Scheduled Tribes, Scheduled Castes and Backward Classes in successive Plans and also in the Annual Reports of the Commissioners for Scheduled Castes and Scheduled Tribes, National Commission for Scheduled Castes and Scheduled Tribes and the National Commission for Backward Classes. There are also special reports available on denotified tribes. Their recommendations have not received attention. The Commission recommends that the Ministry of Social Justice and Empowerment and the Ministry of Tribal Welfare should collate all these materials and recommendations contained in the

reports of the working groups and the reports of the National Commissions and other reports referred to and to strengthen the programmers for the economic development, educational development, generation of employment opportunities, social liberation and full rehabilitation of denitrified tribes. Whatever has been said about *vimuktajatis* also holds good for nomadic and semi-nomadic tribes/communities. The Commission recommends similar action in respect of nomadic and semi-nomadic tribes/communities as done in the case of de-notified tribes or *vimuktajatis*. The continued plight of these groups of communities distributed in the list of Scheduled Castes, Scheduled Tribes and backward classes is an eloquent illustration of the failure of the machinery for planning, financial resources allocation and budgeting and administration in the country to seriously follow the mandate of the Constitution including Article 46. The Commission also points out that the setting up of an integrated net work of National Scheduled Castes and Scheduled Tribes Development Authority,[40] A structural mechanism to deal in a practical way with the *Vimuktajatis* as well as nomadic and semi-nomadic tribes/communities within the frame work of the SCP and TSP. Similarly the approach to the development of backward classes referred to at para 10.14 below contains the approach to deal in a practical way with the *Vimuktajatis* and nomadic and semi-nomadic tribes/communities who are in Backward Class list.

The Commission also considered the representations made on behalf of the denotified and Nomadic Tribal Rights Action Group and decided to forward them to the Ministry of Social Justice & Empowerment with the suggestion that they may examine the same preferably through a Commission

Unorganized labour

In 1991, out of a total work force of 286 million, an overwhelming proportion was in the unorganized sector. Nothing illustrates better, the dualistic structure of our economy. Whereas legal protection for the rights of workers in the organized sector has a long history and the trade union movement has made a major contribution to organized workers' welfare, unorganized labor is in an extremely vulnerable situation. Bereft of trade union support, ill supported by the enforcement agencies of State Governments in regard to the implementation of minimum wages legislations and let down by political formations of nearly all descriptions, unorganized workers have looked to the State in vain to come to their help.

The Commission recommends that the Union legislation for agricultural workers, drafted as far back as 1978-80, should be introduced and passed immediately. It is regrettable that a legal measure of great importance for the welfare of unorganized workers in the rural sector has not had the political salience it deserved. A realistic scheme of credible implementation of minimum wages Acts with particular attention to agricultural labours, relying to a suitable degree on the district Collectors/Dy. Commissioners and district superintendents of police, should be immediately put into action.[16] The commission handled 7918 complaints and petitions. It also made 44 field enquiries in reported cases of atrocities on persons belonging to the scheduled castes and scheduled Tribes. The present is based largely on the complaints received in the commission an action taken thereon and the field enquiries. The debates held on the August house of the constituent

Assembly clearly reflected the concern of our founding fathers and Constitution makers of the welfare of the weak and downtrodden, especially the Scheduled Castes & Scheduled Tribes As Mahatma Gandhi had said "for the sin committed against them in older days by your father and fore fathers, become *Harijans sevaks* to wipe off the sin". After having suffered the yoke of foreign rule and exploitation for centuries, the progress of Independent India depended on all sections of the society developing together. The constitutional makers debated various issues like abolition of untouchability and removal of social disabilities, freedom of conscience, free profession, practice and propaganda of religion, prohibition of discrimination on grounds on religion, race caste and freedom of speech etc. They called for special protection for Scheduled Castes and Scheduled Tribes promotion with special care of the educational and economic interests of the weaker sections of the people, and in particular of the scheduled caste and the scheduled Tribes and protect them from social injustice and all forms of exploitation administration of tribal and scheduled areas, special grounds. For tribal areas, political safeguards and reservation for Scheduled Castes and Scheduled Tribes in legislations, cabinet local bodies and reservation in services extension of reservation after ten years in legislative representative bodies. Constitutional arrangements monitoring and evaluating the safeguards for Scheduled Castes and Scheduled Tribes were also discussed in detail. Most of the ideas relating to the welfare of Scheduled Castes and Scheduled Tribes found place in the Constitution.

REFERENCES

1. National Commission for Scheduled Castes and Scheduled Tribes Fourth Report 1996- 97- 98 Vol. I pp. 1-2.
2. Id. at p. 3.
3. Id at pp. 3-4.
4. Id. at p. 19.
5. Id at p. 20.
6. Ibid.
7. Ibid.
8. Id at p. 32.
9. Id at p. 33.
10. Id. at p. 41.
11. Id at p. 59.
12. Id at p. 60.
13. Id. at pp. 83- 84.
14. National Commission for Scheduled Castes and Scheduled Tribes Third Report Vol. I at pp. 112,116,
15. National Commission for Scheduled Castes and Scheduled Tribes Third Report Vol. I at pp. 216, 217, 221,

16. National Commission for Scheduled Castes and Scheduled Tribes Fourth Report Vol. I at pp. 23-24,

17. National Commission for Scheduled Castes and Scheduled Tribes Fourth Report Vol. I at pp. 83- 84,

18. National Commission for Scheduled Castes and Scheduled Tribes Fourth Report Vol. I at pp. 90, 92, 93,

19. National Commission for Scheduled Castes and Scheduled Tribes Fourth Report Vol. I at pp. 94, 96, 97,

20 National Commission for Scheduled Castes and Scheduled Tribes Fourth Report Vol. I at pp. 98,100, 103,

21. National Commission for Scheduled Castes and Scheduled Tribes Fourth Report Vol. I at pp.105, 111, 113,

22. National Commission for Scheduled Castes and Scheduled Tribes Annual Report 1993- 94. at pp. 10, 22.

23. National Commission for Scheduled Castes and Scheduled Tribes Annual Report 1993-94. at pp. 36-37,

24. National Commission for Scheduled Castes and Scheduled Tribes Annual Report 1993- 94 at pp. 30- 39.

25. National Commission for Scheduled Castes and Scheduled Tribes Annual Report 1993- 94 at pp. 40, 51,

26. National Commission for Scheduled Castes and Scheduled Tribes Annual Report 1993- 94 at pp. 70- 71.

27 National Commission for Scheduled Castes and Scheduled Tribes Special Report 1998. at pp. 2.3.

28 National Commission for Scheduled Castes and Scheduled Tribes special Report 1998 at pp. 6,7,,8.

29. National Commission for Scheduled Castes and Scheduled Tribes, Book 3, Vol. II at pp. 1390-1931

30. Id at pp. 1406- 1408.

31. Id at p. 1393.

32. Id at pp. 1392 - 1393.

33. Id at p. 1396.

34. Id at pp 1399 - 1401.

35 Id at pp 1409 - 1411.

36 Ibid.

37 Id at pp. 1416 - 1417.

38. Id at pp. 1415 to 1416.

39. Id at pp. 1412- 1413.

40. Id at pp. 1417, 1418

Chapter VIII

STATUS OF HUMAN RIGHTS OF THE SCHEDULED CASTES AND BACKWARD CLASSES IN CONTEMPORARY PERSPECTIVE.

STATUS OF HUMAN RIGHTS OF THE SCHEDULED CASTES AND BACKWARD CLASSES IN CONTEMPORARY PERSPECTIVE

Section 3 of the Act lays down that Central Government shall constitute a body to be known as the National Human Rights Commission which shall have eight members and will be headed by a chairperson who has been the former Chief Justice of the Supreme Court. The other members of the Commission shall be a sitting or retired Judge of the Supreme Court, a serving or retired Chief Justice of the High Court, two prominent persons having knowledge or practical experience in the sphere of Human rights and the Chair person of the National Commission for minorities, the Scheduled Castes and Scheduled Tribes and women. The Chairperson and the members of the Commission shall be appointed by the President on the recommendation of a six members Committee headed by the Prime Minister.[1] The Chairperson and the members shall hold office for period of five years, from the date on which they inter upon their office. They shall be eligible for reappointment for another term.[2] A person can serve at the Commission until the age of 70 years. The Commission shall have a Secretary–General who will discharge his functions keeping with the powers delegated to him.[3] The Chairperson or any other member of the Commission may be removed from his office by an order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on reference being made to it by the President has an inquiry held in accordance with the procedure prescribed in that behalf

by the Supreme Court.[4] Reported that the Chair person or such other member ought, on any such ground, to be removed. The President may remove from the office of the Chairperson or any other member if he is adjudged an insolvent, or (b) he is engaged during his term of office if any paid employment out side the duties of his office, or (c) he has become unfit to constitute his office by reason of infirmity of mind or body, or (d) he has been declared by a competent Court a person of unsound mind ,(e) he has been convicted and sentenced to imprisonment for an offence which in the opinion of the President involve moral turpitude. The Chairperson or any member may, by notice in writing addressed to the President of India resign his office. The term of office of the chairperson and members will be five years from the date of assumption of office or until the age of 70 years, whichever is earlier. On ceasing to hold office, the chairperson and members shall be ineligible for further appointment under the government of India or under the government of any state[5]

The Central Government shall make available to the Commission and officer of the rank of the Secretary to the government of India who shall be secretary- General of the Commission, and such police and investigating staff as may be necessary for the efficient performance of the function of the Commission.[6] The Commission may appoint other administrative, technical and scientific staff and considered necessary in conformity with the rules made by the Central government in this behalf. . The function of the Commission are laid down under section 12 of the Act which are as follows—

The Commission shall inquire *suo-moto* or on a petition presented to it

to in sub- section (1), consult the Commission. The Central Government shall, after due appropriation made Parliament by law in this behalf , pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilized for the purposes of this Act. The Commission spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub- section (1).The Commission shall maintain proper accounts and order relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central government in consolation with the comptroller and Auditor-General of India. The accounts of the Commission shall be audited by the comptroller and Auditor- General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor General. The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with the audit as the comptroller and Auditor- General generally has in connection with the audit of government accounts and , in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission. The Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed , its annual report, giving in full account of its activities during the previous financial year and forward a copy thereof, to the Central Government.

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. Since these rights being to them because of their very existence, they become operative with their birth Human rights, being the birth right, are therefore, inherent in all the individuals irrespective of their caste, creed religion sex, and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. They are also necessary as they provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings human rights, inherent rights, are also some times referred to as fundamental rights, basic rights, inherent rights, natural rights, and birth rights. The vast majority of legal scholars and philosophers agree that every human being is entitled to some basic rights. Thus there is universal acceptance of human rights in principle in domestic and international plane.' Human rights' is a generic term and it embraces civil rights civil liberties and social, economic and cultural rights. It is therefore, difficult to give a precise definition of the term 'human rights'. However, it can be said that the rights that all people have by virtue of their being human are 'human rights'. These are the rights which no one can be deprived without a grave affront to justice.[8] It is so because they may effect the human dignity. Thus, the idea of human rights is bound up with the idea of human dignity. Former Chief Justice of India, J.S Verma has rightly stated that human dignity is the quintessence of Human rights.[9] All those rights which are essential for the protection and maintenance of dignity of individuals and create conditions in which every human being can develop his personality to

the fullest extent may be termed as Human rights. However, dignity has never been precisely defined on the basis of consensus, but it accords roughly with justice and good society[10]. Dignity can no longer survive where human beings are humiliated. The world conference on human rights held in 1993 in Veinna stated in the Declaration [11] that all human rights from the dignity and worth inherent in the human person , and that the human person is the central subject of human rights and fundamental freedoms. D.D. Basu defines human rights as those minimum rights which every individuals must have against the state or other public authority by virtue of his being a member of human family, irrespective of any other consideration.[12]

Human rights are, therefore, those rights which belong to an individual as a consequence of being human. They are based on elementary human needs as imperatives. Some of these human needs are elemental for sheer physical survival and health, others are elemental for psychic survival and health. Thus, human rights can be perceived and enumerated. These rights are associated with the traditional concept of natural law.

Rights being immunities denote that there is a guarantee that certain things can not or ought not to be done to a person against his will. According to his concept, Human beings, by virtue of their humanity, ought to be protected against unjust and degrading treatment. In other words, Human rights are exemptions from the operation of arbitrary power. An individual can seek human rights only in an organized communitywide. A State, or in other words, where the civil social other exists. No one can imagine to invoke them in a state of anarchy where

there is hardly any just power to which a citizen can appeal against the violations of rights. Thus, the principle of the protection of Human rights is derived from the concept of man as a person and his relationship with an organized society which can not be separated from universal human nature.

Human rights being essential for all- round development of the personality of the individuals in the society, be necessarily protected and be made available to all the individuals. They must be preserved, cherished and defended if peace and prosperity are to be achieved. Human rights are the very essence of a meaningful life, and to maintain human dignity is the ultimate purpose of government. The need for the protection has arisen because of inevitable increase in the control over men's action by the governments which by no means can be regarded as desireable.[13]. There are several states where fundamental standards of human behavior are not observed. The consciousness on the part of the human beings as to their rights has also necessitated the protection by the states. It has been realized law or that of international law should be to protected them in the interest of the humanity, dignity is the ultimate purpose of government. The need for the protection has arisen because of inevitable increase in the control over men's action by the governments which by no means can be regarded as desirable. There are several states where fundamental standards of human behavior are not observed. The consciousness on the part of the human beings as to their rights has also necessitated the protection the protection by the states. It has been realized that the functions of all the laws whether they are the rules of municipal law or that of international law should be to protect

them in the interest of the humanity.[14]

One of the achievements of the contemporary international law is to recognize human dignity and honor. The individual has come of age in International law. It has been also realized that the international protection of the individuals against the state should no longer be entrusted to the State as his in item. This is clearly reflected from a number of conventions of varying scope which have been adopted under the auspices of the United Nations Organization in the last six decades or so. A number of declarations adopted by the United Nations and its specialized agencies also go to prove that their members have pledged themselves to achieve the promotion of universal respect for and observance of human rights and fundamental freedom. States themselves are conscious of the rights of the human beings. They, in order to protect the rights, have made regional arrangements by making conventions. On national level too, they have taken measures to protect the rights of the individuals by incorporating the provisions relating to it in their constitutions. Non- governmental organizations on national and regional and international level are devoted in bringing the cases of violations of human rights in lime light and finding out ways and means to prevent their occurrence.[15]-

Human rights are indivisible and independent, and therefore, precisely there can not be different kinds of human rights. All human rights are equal in importance and are inherent in all human beings. The universal Declaration of human rights therefore did not categories the different kinds of human rights. It simply enumerated them in different articles. However, the subsequent development made in human rights field under

the United nations system make it clear that human rights are of two kinds, viz. (1) Civil and political Rights, and, (2) Economic, Social and Cultural Rights.[16]

In addition to the above rights there is another kind of rights which may be enjoyed by individuals collectively such as right to development, right to a protected environment, right to self-determination or the physical protection of the group as such through the prohibition of genocide. Such rights are referred to collective rights .Although it is difficult to maintain difference between individual's rights and collective rights.[17] It may be stated that while individuals rights are available to individuals of group, collective rights are not available to individuals alone. They may be enjoyed by a group of individuals collectively. These rights are referred to as right of third generation.

Although United Nations has recognized the above two sets of rights into separate covenants, there is a close relationship between them. It has been rightly realized especially by the developing counties that civil and political rights can have no meaning unless they are accompanied by social, economic and cultural rights. Thus, both the categories of rights are equally important and where civil and political rights do not exist, there can not be full relation of economic , social and cultural rights and vice versa The relationship of the two categories of rights was recognized by the International Human rights Conference held in 1968 which declared in the final proclamation that---

Since Human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of

economic. Social and cultural rights are impossible. The General Assembly in 1977 reiterated that all human rights and fundamental freedoms are indivisible and interdependent and equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political rights and economic social and cultural rights.[18] The resolution also stated that civil and political rights are the means to the social and economic rights of the people. The Vienna conference of 1993 again emphasized that there is no difference between the two sets of rights by stating that—

All human rights are universal, indivisible and interdependent and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. The 2005 World Summit outcome also stated that—

> *"We reaffirm that all human rights are universal, indivisible interrelated interdependent and mutually reinforcing and that all human rights must be treated in a fair and equal manner, on the same footing and it the same emphasis. While the significance of national and regional peculiarities and various historical, cultural and religious backgrounds must be borne in mind, all states, regardless of their political, economic and cultural and religious backgrounds must to borne in mind, all states, regardless of their political, economic and cultural system, have the duty to promote and protect all human rights and fundamental freedom."*

The above statements appear to be true as all rights derived from the inherent dignity of the human person and are essential for his free and full development. The Economic and social Council (ECOSOC) a principal organ of the United Nations was most directly concerned with

the question of human rights. The council under Article 68 of the U.N. Charter was empowered to set up Commissions for the promotion of human rights and such other Commissions as may be required for the performance of its functions.[19] Accordingly, it appointed a Commission on human rights which was approved by the General Assembly on February 12, 1946, Functions and composition of the Commission were outlined in a resolution [20] adopted by the Economic and social Council. The Commission was created as a subsidiary body of the Council.

The Commission was composed of 18 members who were elected by ECOSOC. Each State member selected its own representative. In 1992, the membership was increased to 21, and in 1966 to 32. Since 1991, the Commission has 53 member governments. The Commission meets annually in Geneva for six weeks beginning in March. The Commission meets between annual sessions to deal with urgent human rights situations. Such special sessions have taken place five times by the end of 2004.[21] The Commission reports to ECOSOC which, in tern reports to the General Assembly. The Commission, as determined by its term of reference, was directed to prepare recommendations and reports on the following items;

1. On the International bill of rights.

2. International declarations and conventions on civil liberties, the status of women, freedom of information and similar matters.

3. The protection of minorities,

4. The prevention of discrimination on grounds of race, sex,

language or religion.[22]

The Commission was empowered to carry out studies, make recommendations and draft new international treaties. In addition, it could investigate allegations of human rights violations and take action when presented with evidence of large scale violations. It was also empowered to establish sub-Commissions.

The Commission has set up an elaborate machinery and procedures, country oriented or thematic to monitor compliance by states with international human rights law and to investigate alleged violations of human rights .It is done mainly by dispatching fact- finding missions of countries in all parts of the world whether they are rich or poor, developing or developed countries. For, instance, in 1994 the special Raporteur on religious intolerance visited China and the special Raporteur on contemporary forms of Racism visited the United States of America. During 1970s and 1980s these implementation and fact-finding machinery and procedures became the focus of the Commissions attention. The Commission in 1990s has increasingly turned in attention to provide with advisory services and technical assistance to the needy States so that they may overcome the obstacles in securing the enjoyment of human rights by all.

General Assembly by adopting a resolution[23] on March 15, 2006 resoled to establish the human rights Council to replace he human rights commission. The resolution recommended to the Economic and Social council to request the Commission on Human rights to conclude its work at is sixty- second session. Accordingly, the Commission

concluded the sixty- second (last session) on March 26, 2006 after 60 years of work for the promotion and protection of human rights.

The world leader- heads of the state and Government met at United Nations Headquarters in New York from September 14 to 16, 2005 and adopted a document at the end of the Summit known as 2005 World Summit outcome.[24] The outcome document contains a number of global issues on which the leaders agreed to take action. They agreed to create a U.N. Human rights Council which shall be responsible for the protection of all human rights and fundamental freedoms for all without distinction of any and in a fair equal manner.

In order to implement the above provision of the outcome document, the General Assembly on March 15, 2006, adopted a resolution to establish the human rights. Council, based in Geneva, in replacement of the Commission on Human rights.[25] The Council shall be a subsidiary organ of the General Assembly.

The Human Rights Council shall consist of 47 members who shall be elected directly and individually by secret ballot by the majority of the members of the General Assembly. The membership shall be based on equitable geographical distribution. Membership in the council shall be open to all member states of the United Nations. While electing members of the Council, Member State shall take into account the contribution of candidates to the promotion of members present and voting, could suspend the rights of membership of council member who commits gross systematic violations of human rights. The members of the council will serve for a period of three years and shall not be eligible

for immediate re-election. The first election of the council Members took place on May, 9, 2006..

The Council shall perform the following functions---

(a) It shall promote human rights education and learning as well as advisory services technical assistance and capacity building, to be provided in consultation with and with the consent of member States concerned.

(b) It shall serve as a forum for dialogue on thematic issues on all human rights.

(c) It shall make recommendations to the General Assembly for the further development of International law in the field of human rights.

(d) It shall promote the full implementation of human rights obligations under taken by state and follow up to the goals and commitments related to the promotion and protection of human rights emanating from United Nations Conferences and summits.

(e) It shall under take a universal periodic review , based on objective and reliable information of the, fulfillment by each state of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all states.

(f) It shall contribute, through dialogue and co-operation, towards the prevention of human rights violations and respond promptly to

human rights emergencies.

(g) It shall work in close co-operation in the field of human rights with governments, regional organizations, national human rights institutions and civil society.

(h) It shall make recommendations with regard to promotion and protection of human rights.

(i) The Council shall submit an annual report to the General Assembly.

The Council shall assume the role and responsibilities of the Commission on human rights relating to the work of the office of the United Nations High Commission for Human Rights. Pursuant to the General Assembly Resolution all mandates, mechanisms, functions and responsibilities of the Commission of the human rights including the sub- Commission on the promotion and protection of human rights were assumed by the human rights council as on June, 19 2006. The Human rights council in its decision 1/ 102 of 30 June, 2006 decided to extend exceptionally for one year. The mandates and mandate – holders of the sub- Commission , subject to the review to be under taken by the council in conformity with the General Assembly Resolution of March 15, 2006.[26] The council also decided that the final session of the sub-Commission should be convened for a period of up to four weeks including its pre- session working groups.

National Human Rights Commission (NHRC) established by the Protection of human rights Act of 1993 [27], can also play an active role in

promoting human rights of refugees. The Commission is competent to investigate *Suo-motu* or on the basis of a petition, the violation of human rights of any person. Specific interventions have been made by the Commission relating to the protection of Chakma refugees who have sought refuge in the North- Eastern States of India and Tripura. The Commission has also effectively intervened in cases of illegal detention of Sri Lankan refugees in the state of Tamil Nadu.

NHRC in its Annual Report for 2000- 01 expressed its firm opinion that there is a need for comprehensive national legislation to deal with the refugee situations and this law should be enacted keeping in view of the decisions of the Supreme Court as well as the relevant international instruments, notably the refugee convention of 1951 and the Protocol of 1967.[28] The Government of India, in response, informed the Commission that the Ministry of External affairs has initiated the process of examining the question of treatment of refugees, including the different possibilities such as enactment of national law and/or possibility of singing the convention on refugees and its likely to take time.[29] The action initiated by the government should be completed with in a time frame because the existing glows, regulations and practices in respect of refugees are inadequate to the present times. Greater priority is also required so that matter relating to refugee, touching upon the human rights of an extremely vulnerable group of persons is expeditiously acted upon in a manner that is consistent with the dictates of the constitution, the decision of the Supreme Court and the refugee Convention of 1951 and its Protocol of 1967.

The setting up of a national institution is one of the most effective

means to perform the various functions relating to the implementation of human rights. Such an institution raises human rights awareness through education, training, research and conduct impartial investigation into alleged violations. It may also prove or secure effective redress either by negotiation with the government concerned or may assist the victims by providing relief through a court of law. The domestic institution of human rights may also influence the legislators to preserve human rights in the widest sense of the term. It may also monitor government compliance with treaty commitments. The idea of the creation of an impartial institution of human rights in the states was initiated by the UNESCO as early as in 1946. The Secretariat in the memorandum 'Supervision and enforcement of human rights in 1947 had suggested for the creation of such a body in the states.[30]

In 1966, the General Assembly adopted a resolution for considering the advisability of the proposal for the creation of a national Commission on human rights to perform certain functions pertaining to the observance of the covenant on civil and political rights and the economic, social and Cultural rights.[31] The resolution invited the Economic and Social Council to ask the Commission of Human Rights to examine the question in all its aspects. The Commission in 1970 considered the question and agreed that the question of the establishment of the national Commission on human rights should be decided by each government in the light of traditions and institutions of its own country.[32]

The Commission in 1978 again emphasized the need for the creation of a national institution. But all these attempts went in vain. States paid

little heed towards them. Their attitude towards the creation of the national institution was not may condemn the action of the state's executives and Judiciary of the occasion would demand . However, the desirability of establishment of such an institutions was regarded as of utmost importance for the effective implementation of human rights, such a body being independent and impartial shall be helpful in preventing the occurrence of frequent violations of human rights. .

The World conference on human rights in 1993 realizing the importance of such an institution or commission, stated that the World conference of human rights urges governments to strengthen national structures, institutions and organs of society which play a role in promoting and safeguarding human rights.[33] The conference also recommended for strengthening the United Nations activities and programmes to meet request for assistance by states which want to establish or strengthen their own national institutions for the promotion and protection of human rights. It also recommended strengthening of co-operation between national institutions particularly through exchange of information and experience as well as co- operation with regional organization and the United Nations. Periodic meetings of the representatives of such institutions under the auspices of the Centre for Human rights to examine ways and means of improving their machinery and sharing experiences were also recommended. Thus, the world conference attached great importance to national institutions for the promotion of human rights was laudable.[34] The interest shown in the international forum implied that it was in favor of establishing such an institution. However, at that time no such institution as established.

Creation of a National Human Rights Commission, because of the awareness among the people for the protection of Human Rights.

The Human rights Commission Bill was introduced in the Lok Sabha on May, 14, 1992. The Bill was referred to the standing committee of the Parliament on Home affairs. However, due to the urgency of the Commission in view of the pressure from the foreign countries and from the domestic front, the President of India on September 27, 1993 promulgated an ordinance for the creation of the National Commission on Human Rights (NCHR) and Commission at state level. After having made certain amendments, the protection of Human rights Bill was passed by both the Houses of the Parliament to replace the ordinance. The Bill became an Act, after it received that assent of the President on January 8, 1994 which is known as the protection of the Human Rights Act.[35] The purpose of the enactment is laid down in the preamble of the Active, to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in the states and human Rights Courts for better protection of Human Rights and for matters connected therewith or incidental there to.

Section 2(d) of the Act, defined the expression ' Human Rights" by stating that human rights means the rights relating to the life, liberty, equality, and dignity of the individuals guaranteed by the constitution or embodied in the International covenants and enforceable by courts in India. The above definitions limit the scope in the functioning of the NHRC. India ratified the two Covenants–International covenants on Civil and Political Rights and the covenants in the Act, are purely cosmetic. The decisive words are: "enforceable by Courts in India".

These words limit human rights strictly to the fundamental rights embodied in Part III of the Constitution, which are enforceable by the courts in India. The fact is that they are more limited than human rights in the covenants. Further the commissions mandate does not extend to those human rights which have been recognized in international treaties signed and ratified by India besides the fundamental rights. A pertinent question arises as to why the commission was established for the protection of fundamental rights when they being constitutional rights are enforceable before the courts. It appears that the main purpose of the enactment was to provide better protection of human rights. At the time of passing of the Bill there was growing concern in the country and abroad about issues relating to human rights. Having regard to this, Government was reviewing the existing laws, procedure and system of administration of justice with a view to bringing about greater accountability and transparency in them and devising efficient and effective methods of dealing with the situation. It was thought that the Commission would provide immense help in this regard. Wide- ranging discussions were held in a number of conferences and seminars and after taking into account the views expressed therein, the Bill was brought before the Parliament. The Act set up a National Human Rights Commission and the State Human Rights Commissions in the States and the Human rights Courts in the districts.

The aim of any civilized society should be to secure dignity to every individual. There cannot be dignity without equality of status and opportunity. The absence of equal opportunities is any walk of social life is a denial of equal status and equal participation in the affair of the

society sand, therefore, of its equal membership. The dignity of the individual is dented and direct proportion to his deprivation of the access to social means. The democratic foundations are missing when equal opportunity to grow, govern, and give one's best to the society is denied to sizeable section of the society. The deprivation of the opportunities may be direct or indirect as when the wherewithal's to avail of them are denied. Nevertheless, the consequences are as potent.[36].

Inequality, ill-favours, fraternity and unity remains a dream without fraternity. The goal enumerated in the preamble of the constitution, of fraternity assuring the dignity of the individual and the unity and integrity of the nation must, therefore, remain unattainable so long as the equality of opportunity is not ensured to all. Likewise, the social and political justice pledged by the preamble of the constitution to be secured to all citizens, will remain a myth unless first economic justice is guaranteed to all. The liberty of thought and expression also, will remain on paper in the face of economic deprivations. A remunerative occupation is a means not only of economic upliftment but also of installing in the individuals self- assurance, self-esteem, self-worthiness. It also accords him a status and dignity as an independent and useful member of the society. It enables him to participate in the affairs of the society without dependence on, or domination by others, and on an equal plane depending upon the nature security and remuneration of the occupation. Employment is an important and by far the dominant remunerative occupation and when it is with the government, semi- government, or government- controlled organization,

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it has as an edge. It is coupled with power and prestige of varying degrees and nature, depending upon the establishment and the post. The employment under the state, by itself, may, many times help achieve the triple goal of social economic and political justice..

The employment whether Private or public, thus, is a means of social leveling and when it is public, is also means of directly participating in the running of the affairs of the society. A deliberate attempt to secure it to those who were designedly denied the same in the past, is an attempt to do social and economic justice to them as ordained by the preamble of the Constitution. The equality contemplated by Article14 and other cognate. Article 15(1), 16(1), 29(2) and 38(2) of the constitution, is secured not only when equals are treated equally but also when unequals are treated unequally. Conversely, when unequals are treated equally, the mandate of equality before law is breached. To bring about equality between the unequals. Therefore, it is necessary to adopt positive measures to abolish inequality. The equalizing measures will have to use the some tools by which inequality was introduced and perpetuated. Otherwise, equalization will not be of the unequal's. Article 14 which guarantees equality before law would by itself, without any other. The founders of the constitution, however, thought it advisable to incorporate another provision viz. Article16specifically providing for equality of opportunity in matters of public employment. Further they emphasized in clause (4) thereof that for equalizing the employment opportunities in the services under the state, the state may adopt positive measures for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the state. The trinity

of the goals of the constitution, viz, secularism socialism, and democracy can not be realized unless all sections of the society participate in the state power equally, irrespective of their caste, community, race religion and sex and all discrimination s in the sharing of the state power made on those grounds are eliminated by positive measures.

Under Article 16 (4) the reservation in the state employment is to be provided for a "class of people" which must be "backward" and "in the opinion of the state" Under Article 46 , the state is required to " promote with social care" the "educational and economic interests" of the "weaker sections" of the people and "in particular" of the Scheduled Castes and Scheduled Tribes, and "to protect" them from "social injustice" and "all form of exploitation" Since in the present case, the court is not concerned with the reservations in favour of the Scheduled Castes / Scheduled Tribes, it is not necessary to refer to Article 335 except to point out that, it in terms provided there that the claims of Scheduled Castes/ Scheduled Tribes in the services are to be taken into consideration, Consistently with the maintenance of efficacy of administration .It must , therefore, means that the claims of other backward class of citizens and weaker sections must also e considered consistently with the maintenance of the efficacy, for, whomsoever, therefore, reservation is made the efficacy of administration is not to be sacrificed, whatever the efficacy may mean. That is the mandate of the constitution itself.

The various provisions in the Constitution relating to reservation, therefore, acknowledge that reservation is an integral part of equality

where inequalities exist. Further, they accept the reality of inequalities and of the existence of unequal social groups in the Indian society. They are described variously as "Socially and educationally backward classes" Article 15(4) and Article 340, "Backward class" Article 16(4) and "weaker sections of the people" Article 46. The provisions of the constitution also direct that the unequal representation in the services be remedied by taking measures aimed at providing employment to the discriminated class by whatever different expressions the said class is described.

The objectives of reservation may be spelt out variously, As the U.S Supreme Court has stated in different celebrated cases viz, Oliver Brown et. Al V. Board of education Topeka et al.[37] *Spottswood Thomas Bolling et al V C Nelvin Sharpe et al*[38], *Marco Defunis et al V. Charles Odegared*[39], Regents of *University of California V. Allan Bakke*,[40] *H Earl Fullilove et al V. Philp M Kluznick* [41] and *Metro Broadcasting Inc. V. Federal Communications Commission*[42] rendered as late as on June 27, 1990, the reservation or affirmative action may be undertaken to remove the "persisting or present and continuing effects of posts discrimination" to lift the limitation on access to equal opportunities" to grant opportunity for full participation in the governance of the society to recognize the discharge "special obligations" towards the disadvantaged and discriminated social group "to over come substantial chronic under representation of a social group" or "to serve the important governmental objectives" .

Under the Constitution, the reservation in employment in favour of backward classes are not intended either to be indiscriminate or

permanent. Article 16 (4) which provides for reservations, also at the same time prescribes their limits and conditions. In the first place, the reservations are not to be kept in favour of every backward class of citizens. It is only that backward class of citizens which, in the opinion of the state, is "not adequately represented" in the services under the state, which is entitled to the benefit of the reservations. Secondly, and this follows from the first, even that backward class of citizens would cease to be the beneficiary of the reservation policy, the moment the state comes to the conclusion that it is adequately represented in the services. The first order dated 13th August, 1990, acknowledges the fact that our society is multiple and undulating, and expressly refer to the second backward classes Commission, popularly known as Mandal Commission and its report submitted to the government of India on 31st December, 1980 and the purpose for which the commission was appointed, viz, for early achievement of "the objective of the social justice" enshrined in the constitution. The order then states that the government have considered carefully, the report of the commission and the recommendations of the commission in "present context" regarding the benefits to be extended the "socially and educationally Backward Classes" (SEBCs) as opined by the commission. The order further declares that the government are of the clear view that the outset "certain weight age is to be provided to such classes in the services of the Union and other public under takings" with this preface, the order proceeds to,--

(1) Provide for reservation of 27% of the vacancies in civil posts and services under the union Government to SEBCs.

(2) Restrict the reservations to the vacancies to be filled in by direct recruitment only (and thus by necessary implication excludes reservations in recruitment by promotion)

(3) Leave the procedure to be followed for enforcing reservation to be detailed in instructions to be issued separately.

(4) Make it clear that those belonging to SEBCs who enter into services in the open i.e. unreserved category are not to be counted for the purpose of calculating the reserved quota of 27%.

(5) Specify that in the first phase of reservation, it is only SEBCs castes and communities which are common to both the lists given in the report of the Mandal commission and the list prepared by the state governments, would be beneficiaries of the reservations.

(6) State that the list of such common castes and communities will be issued by the government separately.

(7) Give effect to the reservation from 7th August, 1990 and

(8) Explain that the reservation quota will apply not only to the services under the government of India but also to the services in the public sector under takings and financial institutions including the public sector bank.

With the majority decision of this Court in *State of Kerala V. N.M Thomas.*[43] having confirmed the minority opinion of Subba Rao, J. in *T. Devadasan V. Union of India*[44] the settled Judicial view is that clause (4) of Article 16 is not an exception to clause (1) thereof, but is merely an

emphatic way of stating that is implicit in clause (1).

The reservations can take various forms whether they are made for backward or other classes. They may consist of preference, concessions, exemptions, extra facilities etc. or of an exclusive quota in appointments as in the present case. When measures other than an exclusive quota for appointments are adopted, they form part of the reservation measures or are ancillary to or necessary for availing of the reservation, the backward classes have to look for them to Article 16(4) and the other classes to Article 16(1).

What would be the content of the phrase backward class" in Article 16(4) of the constitution and whether caste by itself could constitute a class and whether economic criterion by itself could identify a class for Article 16(4) and whether "backward Class" in Article 16(4) would include the weaker sections" mentioned in Article 46 as well. The courts have, as will be instantly, equated the expression "Backward classes of citizens" "SEBCs" found I Article 15 (4) and Article 340, even the impugned orders have used the expression "Socially and educationally backward Classes of citizens" The impugned orders have chosen to give the benefit of reservation expressly to SEBCs and since it is not suggested that SEBCs are not "backward class of citizens" within the meaning of Article 16(4),

In this connection, a reference may first be made to Article 335 of the Constitution. There is no doubt that backward classes under Article 16(4) would also include Scheduled Castes/Scheduled Tribes for whose entry into services, provision is also made under Article 335. There is

however, a difference in the language of the two Articles. Whereas, the provision of Article 16(4) is couched in an enabling language, that of Article 335 is in a mandatory caste. It appears that it became necessary to make the additional provision of reservations for Scheduled Castes / Scheduled Tribes under the Article 335 because for them the reservations in services were to be made as obligatory as reservations in the house of people and the Legislative Assemblies under Article330 and 332 , respectively .When Court remember that Article 330, 332 and 335 belong to the family of Articles in part xvi which makes " special provisions relating to Certain classes" the additional that obligatory provision for Scheduled Castes and Scheduled Tribes under Article335 becomes meaningful. It is probably because of the mandate of Article 335 and the level of backwardness of the Scheduled Castes and Scheduled Tribes, the most backward among the backward classes that it also became necessary to caution and emphasize in the same vein, that the imperative claims of the Scheduled Castes and Scheduled Tribes shall be taken into consideration consistently with the efficacy of the administration, and not by sacrificing it. It can not however, be doubted that the same considerations will have to prevail while making, provisions for reservation in favour of all backward classes under Article 16(4).

The Apex Court may analyze Article 16 in the light of the question. In the first instance, it is necessary to note that neither clauses (1) and (2) of Article 16 read together, nor clause (2) of Article 29 prohibits discrimination and, therefore, classification, which is not made only on the ground of religion, race, caste, sex descent, place of birth, residence

or any of them. They do not prevent classification, if religion, race, caste, etc. are other grounds or considerations germane for the purpose for which it is made. Secondly, Clause (1) and (2) of Article 16 prevent discrimination against individuals and not against classes of citizens. Thirdly, clause (4) of Article 16 enables the state to make special provision in favour of any backward "class" of citizens and not in favour of citizens who can be classified as backward. The emphasis is on" class of citizens" and not on" citizens" Fourthly, as has already been pointed out the class of citizens under Article 16 (4) has not only to be backward but also a class which is not adequately represented in the services in the state. Fifthly, when the court remembered that a scheduled Castes and Scheduled Tribes are also the members of the backward classes of citizens with in the meaning of Article 16(4), the nature of backwardness of the backward class citizens is implicit in Article 16(4) itself. Further, part xvi of the constitution which makes special provision under Article 338 for National Commission for Scheduled Castes and scheduled Tribes for investigating their conditions, makes a similar provision under Article 340 for appointment of commission to investigate the conditions also of socially and educationally backward classes of citizens" The two provision leave no doubt about the kind of backwardness that the constitution takes care of in Article 16(4). What is more Clause (4) of Article 15 which was added after the decisions in the *State of Madras V.Srimathi Champakam Deorajan* etc.[45]. Nothing in Article 15 or in clause(2) of Article 29, shall prevent that state from making any special provision for the advancement of any " Socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes" The

significance of this amendment should not be lost sight of in groups " Socially and educationally backward classes" with scheduled Castes and Scheduled Tribes" When it is remembered that Articles 341 and 342 enables the president to specify by notification , the scheduled castes, and Scheduled Tribes, it is such specifications from time to time may be from the socially and educationally backward classes or from classes whose economic backwardness is on account of their social and educational backwardness.

In *M.R Balaji V. State of Mysore*,[46] what fell for consideration was Article 15(4), and on the language of the said Article, it was held by this court that the backwardness contemplated by the said Article was both Social and educational. In *Janki Prasad Parmoo V. State of Jummu* and Kashmir,[47]. which was a case under Article 16(4), this court read" backward class of citizens" in Article 16(4) as Socially and educationally "backward class of citizens" Although Justice Palekar who delivered the Judgment for the Court, proceeded to equate the two expressions on the assumption that "It was well-settled that the expression "Any socially and educationally backward classes of citizens" in Article 15(4). It is true that no decision prior to this decision had in terms sought to equate the two expressions ,to that extent the said statement can be faulted as it is sought to be done before the Apex Court.

In *K.C Vasanth Kumar V. State of Keral*,[48] the court was called upon to express opinion on the issue of reservations which may serve as a guideline to the commission which the government of Karnataka proposed to appoint for examining the question of affording better

employment and educational opportunities to the Scheduled Castes and Scheduled Tribes and other backward classes .Hence, the interpretation of the expression "Socially and educationally backward classes" under Article 16(4) and of the expression "backward class of citizens" under article 15(4) and their co- relation, fell for consideration directly. The five Judges of the Bench with the exceptions of chief Justice Chandrachud expressed their opinion on these two expressions. Desai J. held that "Courts have more or less veered round to the view that in order to be socially and educationally backward classes, the group must have the same indicia as Scheduled Caste and Scheduled Tribes". The Learned judge then proceeded to deal with what, according to him, was a narrow question, viz, whether caste label should be sufficient to identify social and educational backwardness. However, it appear that Learned Judge proceeded on the footing that expression " Socially and educationally backward classes of citizens". Chinnappa Reddy, J, dealt with the two expressions a little extensively and came to the discussion as follows—

> *"Now, it is suggested that socially and educationally backward classes of citizens and the Scheduled Castes and the Scheduled Tribes for whom special provision for advancement is contemplated by Article 15(4) are distinct and separate from the backward classes of citizens who are inadequately represented in the services under the state for whom reservation of posts and appointments is contemplated by Article 16(4). The' backward class of citizens' referred to in Article16(4), despite the short description, are the same as 'the socially and educationally backward classes of citizens and the Scheduled Caste and the Scheduled Tribes' So fully described in Article 15(4), Vide, Triloknath Tiku V. State of Jummu and Kashmir [49] and*

other cases"

Sen, J. also appears to have proceeded on the footing that the two expressions, viz," Socially and educationally backward classes" under Article 15(4) and " Backward class of citizens" under Article 16(4) are synonymous. Venkataramiah, J held that "Article 15(4) and Article 16(4) are intended for the benefit of " those who belongs to caste, communities which are traditionally disfavored and which have suffered societal discrimination in the past "The other factors such as physical disability, poverty place of habitation etc- according to the Learned Judge were never in the contemplation of the makers of the constitution while enacting these clauses" The Learned Judge has held that " while relief may be given in such cases under Article 14. Article 15(1) and Article 16(1) by adopting a rational Principle of classification, Article 14,Article 15(4) and Article 16(4) can not be applies to them" The learned Judge has further held that it is now accepted that the expressions' socially and educationally backward classes of citizens' and the scheduled Castes and the Scheduled Castes and Scheduled Tribes' in Article 15(4) of the Constitution together are equivalent to 'backward class of citizens' in Article 16(4).

There is, therefore, no doubt that the expression' backward class of citizens' is wider and include it." Socially and educationally backward class of citizens" and "Scheduled Castes and Scheduled Tribes"

Whether the social and educational backwardness of the other backward classes has to be akin to or of the same level as that of the Scheduled Castes and scheduled Tribes. It is true that some decisions of Court such

as *M.R.Balaji V. State of Mysore*[50] and State of Andhra Pradesh V. P. Sagar,[51] have taken the view that the backwardness of the backward class under Article 16(4) being Social and educational, must be similar to be backwardness from which the Scheduled Castes and Scheduled Tribes suffer. In Balaji's case it is stated.

"It seems fairly clear that backward classes of citizens for whom special provision is authorized to be made are, by Article 15(4) itself, treated as being similar to be Scheduled Castes and Scheduled Tribes which have been defined were known to be backward and the Constitution makers felt no doubt that special provision had to be made for their advancement. It was realized that in the Indian society there were other classes of citizens who were equally, are may be somewhat less, backward than the scheduled castes and scheduled Tribes and it is thought that some special provision ought to be made even for them"

After referring to the provisions of Article 338(3), 340(1), 341 and 342, the Court proceeded to hold as follows—

> *"It would thus be seen that this provision contemplates that some backward classes may be the Presidential order be included in Scheduled Castes in Scheduled Tribes. That helps to bring out the point that Backward Classes for whose improvement special provision is contemplated by Article 15(4) are in the matter of their backwardness comparable to Scheduled Castes and Scheduled Tribes"*

Similarity of Social and educational backwardness was accepted in state of Andhra Pradesh V. P sagar.[52] However, in state of Andhra Pradesh V. US Balram,[53] the earlier pointed out that the decisions do not lay down that backwardness of the other backward classes must be exactly similar

in all respects to that of the scheduled Castes and scheduled Tribes. Further in Janki Prasad Parimoo V, State of Jummu and Kashmir,[54] the test laid down in Balaji's Case[55]has been explained in following words—

Indeed all sectors in the rural areas deserve encouragement but whereas the former by their enthusiasm for education can get on social stream by positive efforts by the state. That accounts for the raison d'etre of the principle explained in Balaji's Case which pointed out that backward classes for whose improvement special provision was contemplated by Article 15(4) must be comparable to Scheduled Castes and Scheduled Tribes who are standing example of backwardness socially and educationally. If those examples are steadily kept before the mind the difficulty in determining which other classes should be ranked as backward classes will be considerably eased"

In *Kumar K.S.Jaysree V. State of Kerala,*[56] it is stated—

> *"Backward classes for whose improvement special provisions are contemplated by Article 15(4) are in the matter of their backwardness comparable to scheduled Castes and Scheduled Tribes. This Court has emphasized in decisions that the backwardness under Article 15(4) must be both social and educational. The concept of backwardness in Article 15(4) is not intended to be relative in the sense that classes who are backward in relation to the most advanced classes of society should included in it"*

The test of comparable backwardness laid down in Balaji's Case[57] has not been and is not to be , understood to mean that backwardness of the other backward classes has to be of the same degree as or identical in all respects to, that of the scheduled castes and scheduled tribes. At the

same time the backwardness is not to be measured in terms of the backwardness of the forward classes and those who are less forward than the forward or to be classified as backward. The expression "backward class of citizens" has been used in Article 16(4) in a particular context taking into consideration the social history of this country. The expression is used to denote those classes in the society which could not advance socially and educationally because taboos and handicaps created by the society in the past or on account geographical or other similar factors. In fact, the "expression backward classes" could not be adequately encompassed in any particular formula and hence, even Dr. Ambedkar while replying to the debate.

It will have, therefore, to be held that the backwardness of the backward classes other than the Scheduled Castes and tribes who are entitled to the benefit of the reservations under Article 16(40, need not be exactly similar in all respects to the backwardness of the scheduled Castes and Scheduled Tribes. That is not necessary that the social , educational and economic backwardness of the other backward classes should be exactly of the same kind and degree as that of the scheduled Castes and scheduled Tribes is recognized by the Various provisions of the constitution itself since they make difference between the scheduled castes and scheduled Tribes on the one hand, and other " Socially and educationally backward classes are backward exactly in all respects as the scheduled Castes and scheduled Tribes, the President has the power to notify them as scheduled Castes and scheduled tribes, and they would not continue to be the other backward classes. The nature of their backwardness, however, will have to be mainly social resulting in their

educational and economic backwardness as that of the scheduled Castes and scheduled Tribes.

There is no doubt that no classification can validly be made only on the basis of caste just as it can not be made only on the basis of religion race, sex, descent place of birth or any of them, the same being prohibited by Article 16(2) , What is however required to be done for the purposes of the Article 16(4) not classification but identification. The identification is of the backward classes of the citizens, which have to be socially and, therefore, educationally and economically backward. Any factor whether caste race, religion occupation habitation etc. which may have been responsible for the social and educational backwardness, would naturally also supply the basis for identifying such classes not because they belong to particular religion race, caste, occupation area, etc, but because they are socially and educationally backward classes.

In view of the above meanings ascribed to the terms, it can hardly be argued that caste is not a class and can form a separate class. If therefore, a caste is also a backward ward class within the meaning of Article 16(4), there is nothing in the said Article or any other provision of the constitution, to prevent the conferment of the special benefits under that Article on said caste, Hence, it can hardly be argued that caste in no circumstances may form the basis of or be a relevant consideration of backward class of citizens.

The context in which the amendment to Article 15 was made being sufficiently illuminating on the subject, may first be noticed in Champakam's Case, the seven Judge Bench of this court struck down

the classification made on basis of caste, race, and religion for the purposes of admission to educational institutions on the ground that Article 15 did not contain a clause such as clause (4) of article 16. The necessary corollary of that view is that with the clause like (4) of Article16, the enumeration of backward classes on the basis of caste, race, or religion would not be bad and that it exactly what was held by the same Bench in a decision delivered on the same day in the case of *B Venkataranama V. State of Madras* [58] This was a case directly under Article 16(4) unlike Champakam which was under Article 15. In this case, the Communal G.O of the Madras Government made reservation of posts for Harijan and backward Hindus as well as for other communities viz, Muslims Christians, non-Brahmin Hindus and Brahmins. The Court upheld the reservations in favour of Harijans and backward. Hindus holding that those reserved posts were so reserved not on the ground of religion, race, caste etc. but because of the necessary for making a provision for reservation of such posts in favour of a backward class of citizens. The Court however, struck down the reservations in favour of other than Harijans and backward Hindus on the ground that it was not possible to say that those classes were backward classes. It can be seen this decision that the classification of the backward classes into Harijan and backward Hindus was upheld by the court as being permissible under Article 16(4).

The Court then observed that there is no gainsaying the fact that there are numerous Castes in this country which are socially and educationally backward. To ignore their existence is to ignore the facts of life However ,the court there after proceeds also to state that the government

should not proceed on the basis that once a caste is considered as a backward class ,it should continue to be a backward class for all times. Such an approach would defeat the very purpose of the reservation.

In *Balram's Case*[59] it was held that entire caste can be socially and educationally backward and in such circumstances reservation can be on the basis of caste not because they are castes but because they are socially and educationally backward classes. It was also held that reservation can also be on the basis of population of the different castes separately as social and educational backward classes. It was further held that if the candidates from social and educational backward castes secured 50 percent or more seats of merit in the general pool, the list of backward classes need not be invalidated but the government should be asked to review it.

In *K.S Jaysree V. State of Kerala* [60] it was observed as follows-

> *"In ascertaining social backwardness of a class of citizens it may not be irrelevant to consider the caste of the group of citizens caste can not, however, be made the sole or dominant test. Social backwardness is in the ultimate analysis the result of poverty to a large extent. Social backwardness which results from poverty is likely to be aggravated by consideration of their caste. This shows the relevance of both caste and poverty in determining the backwardness of citizens. Poverty by itself is not the determining factor of social backwardness. Poverty is relevant in the context of social backwardness. The commission found that the lower income group constitutes socially and educationally backward classes. The basis of the reservation is not income but social and educational backwardness determined on the basis of relevant criteria. If any classification of backward classes of citizens is based*

solely on caste on citizens it will perpetuate the vice of caste system. Again, if the solely on poverty it will not be logical"

In *K.S Vasanth Kumar V.State of Karnataka*,[61] Chinappa Reddy J, stated as follows---

> *"Any view of the caste system, class or cursory, will at once reveal the firm links which the caste system has with economic power. Land and Learning, two of the primary sources of economic power in India, have till recently been the monopoly of the superior castes. Occupational skills were practiced by the middle castes and in the economic system prevailing till now they could rank in the system next only to the castes constituting the landed and learned gentry. The lowest in the hierarchy were those who were assigned the meanest tasks, the out-castes who wielded no economic power. The position of a caste in rural society is more often than not mirrored in the economic power wielded by it and vice- versa. Social hierarchy and economic position exhibit an undisputable mutuality. The lower, the caste, the poorer its members."*

Bernnan, J, observed that the claim that the law must be "colour-blind" is more and aspiration rather than a description of reality and that any claim that the use of racial criteria is barred by the plain language of the statute must fall in light of the remedial purposes of Title vi (of the civil Rights Act,1964) and its legislative history . On the contrary he observed, that the prior decisions of the court strongly suggested that Title VI did not prohibit the remedial use of the race where such action is constitutionally permissible. In this connection it will be worthwhile to quote two passages from the Learned Judge's opinion in that case. While dealing with equal protection clause in the fourteenth Amendment, the Learned Judge observed as follows—

"The assertion of human equality is closely associated with the proposition with differences in colour or creed, birth or status, are neither significant nor relevant to way in which person should be treated. None the less, the position that such factors must be 'constitutionally an irrelevance' summed up by the shorthand phrase ' our constitution is color blind' has never been adopted by this court as the proper meaning of the Equal Protection Cause. Indeed, we have expressly rejected this proposition on a number of occasions. Our cases have always implied that an 'overriding statutory purpose' could be found that would justify racial classifications. More recently, this court unanimously reserved the Georgia Supreme Court which had held that a desegregation plan voluntarily adopted by a local school board which assigned students on the basis of races, was per se invalid because it was not color blind. We conclude , therefore, that racial classifications are not per se invalid under the fourteenth Amendment. Accordingly we turn to the problem of articulating what our role should be in reviewing state action that expressly classifies by race"

The conclusion that state educational institution may constitutionally adopt admissions programs designed to avoid exclusion of historically disadvantaged minorities , even when such programs explicitly take race into account finds direct support in our cases construing congressional legislation designed to overcome the present effects of the past discrimination. Venkataramiah, J in the same decision observed as follows-

"An examination of the question in the background of the Indian social conditions shows that the expression' backward classes' used in the constitution referred only to those who were born in particular castes or have belonged to particular races or tribes or religious which were backward."

The Caste system is prevalent only among the Hindus, and other

religions are free from it. Jains have never considered themselves as a part from Hindus. For all practical purposes and from all counts, there are no socially and educationally backward classes in the Jain community for those who embraced it most belonged to the higher castes. As regard Buddhists, if the Apex Court exclude those who embraced Buddhism along with Dr. Ambedkar in 1955, the population of Buddhist is negligible. If However, the Apex Court include the new converts who have came to be known as Nav-Buddhists, admittedly almost all of them are from the Scheduled Castes and denied the benefit of reservation on the ground that they had no longer remained the lower castes among the Hindus qualifying to be included among the Scheduled Castes. On account of their agitation, perverse, reasoning was set right and today the nav-Buddhists continue to get the benefit of reservation on the ground that their low status in society as the backward classes did not change of their religion.

Article 46 enjoins upon the state to promote with special care , the educational and economic interest of the "weaker sections" of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes to protect them from social injustice and all forms of exploitation. The expression " weaker sections" of the people is obviously wider than the expression " backward classes" of citizens in Article 16(4) which is only a part of the weaker sections. The expression backward classes" of citizens is used there in a particular context which is germane to the reservation in the services under the state for which that Article has been enacted . It has also been pointed out that in that context, read with section 15(4), and 340, the said expression means only those classes

which are socially backward and those educational and economic backwardness is on account of their social backwardness and which are not adequately represented in the services under the state. Hence, the expression "backward class" of citizens in Article 16(4) does not comprise all the weaker sections of the people, but only those which are socially and, therefore, educationally backward, and which are inadequately represented in the services. The expression "weaker sections of the people" used in Article [62], however, is not confined to the aforesaid classes only but also includes other backward classes as well, whether they are socially and educationally backward or not and whether they are adequately represented in the services or not .What is further, the expression "weaker sections" of the people does not necessary refer to a group or a class. The expression can also take wit in its compass, individuals who constitute weaker sections or weaker parts of the society. This weakness may be on account of the present impoverishment arising out of physical or social handicaps. The instances of such weaker sections other than Scheduled Castes and Scheduled Tribes and socially and educationally backward classes may be varied, viz, flood earthquake , cyclone, fire, famine and project affected persons, war and riot torn persons physically handicapped persons those without any or adequate means of livelihood , and those live below the poverty line, slum dwellers, etc Hence, the expression" weaker sections" is wider than the expression" backward classes" of citizens. "Socially and educationally backward classes" and Scheduled Castes and Scheduled Tribes . It connotes all sections of the society who are rendered weaker due to various causes Article 46 is aimed at promoting their educational and economic interests and protecting them

from social injustice and exploitation. This obligation cast on the state is consistent both with the Preamble as well as Article 38 of the Constitution.

However, the provisions of Article 46 should not be confused with those of Article 16(4) and hence the expression "weaker sections of the people" in Article 46 should not missed up with the expression "Backward class of citizens" under Article 16(4). The purpose of Article 16(4) is limited. It is also give adequate representation in the services of state to that class which has no such representation. Hence, Article 16(4) carves out a particular class of people and individuals from the "weaker sections" and the class it carves out is the one which does not have adequate representation in the services under the state. The concept of "weaker sections" in Article 46 has no such limitation. In the first instance, the individuals belonging to the weaker sections may not form a class and they may be weaker as individuals only. Secondly, their weakness may not be the result of past social and educational backwardness of discrimination. Thirdly, even if they belong to an identifiable class but that class is represented in the services of the state adequately, as individuals forming weaker section, they may be entitled to the benefits of the measures taken under Article 46, but not to the reservations under Article 16(4). Thus, not only the concept of "weaker sections" under Article 46 is different from that of the backward class" of citizens in Article16 (4), but the proposal of the two is also different. One is for the limited purpose of the reservation and hence suffers from limitations, while the other is for all purposes under Article 46, which purposes or other than reservation under Article 16(4). While those

entitled to benefits under Article 16(4) may also be entitled to avail of the measures taken under Article 46, the converse is not true. If this is borne in mind, the reasons why mere poverty or economic consideration can not be a criterion for identifying backward classes of citizens under Article 16(4) would be more clear.

Economic backwardness is the bane of the majority of the people in this country. There are poor sections in all the castes and communities. Poverty runs across all barriers. The nature and degree of economic backwardness and its causes and effects, however vary from section of the populace. Even the poor among the higher castes are socially as superior to the lower caste as the rich among the higher caste. Their Economic backwardness is not on account of social backwardness. The educational backwardness of some individuals among them may be an account of their poverty in which case economic case alone may enable them to gain an equal capacity to compete with others. On the other hand, those who are socially backward such as the lower castes or occupational groups, are also educationally backward on account of their social backwardness, their economic backwardness being the consequence of both their social and educational backwardness. Their educational backwardness is not on account of their economic backwardness alone. It is mainly on account of their social backwardness. Hence, mere economic aid will not enable them to compete with others and particularly with those who are socially advanced. Their social backwardness. It is necessary to bear this vital distinction in mind to understand the true import of the expression "backwardness class of citizens" in Article 16(4).If it is mere

educational backwardness or were economic backwardness that was intended to be specially catered to, there as was no need to make a provision for reservation in employment in the services the state. That could be taken care of under Article 15(4), 38, and 46. The provision for reservation for appointment under Article 16(4) is not aimed at economic upliftment or alleviation of poverty. Article 16(4) is specially designed to give a due share in the state power to those who have remained out of it mainly on account of their social and, therefore, educational and economic backwardness. The backwardness that is contemplated by Article 16(4) is the backwardness which is both the cause and consequence of non- representation in the administration of the country. All other kind of backwardness irrelevant for the purpose of the said Article. Further, the backwardness has to be a backwardness of the whole class and not of some individuals belonging to the class, which individuals may be educationally or economically backward, but the class to which they belong may be socially forward and adequately or even more than adequately represented in the services, the reservation under Article 16(4) is not for individuals but to a class which must be both backward and inadequately represented in the services , such individuals would not be beneficiaries of reservation under Article 16(4). It is further difficult to come across a" class" which is socially and educationally advanced but is economically backward or which is not adequately represented in the services of the state on accounts on its economic backwardness. Hence, mere economic or mere educational backwardness which is not the result of social backwardness, can not be a criterion of backwardness for Article 16(4).

That only economic backwardness was not in the contemplation of the constitution is made further clear by the fact that at time of first Amendment to the constitution which added clause(4) to Article 15 of the Constitution, one of the members. Prof. K.T.Shah, wanted the elimination of the word "classes" in and the addition of the word " economically " to the qualifiers of the term " Backward classes". This Amendment was not accepted. Prime Minister Nehru him self stated that the additional of the word "economically" would put the language of the Article at variance with that of Article 340. He added that socially "is a much wider term including many things and certainly including "economically" This shows that economic consideration alone as the basis of backwardness was not only not intended but positively discarded.

The reason for discarding economic criterion as the sole test of backwardness are obvious. If poverty alone is made the test, the poor from all castes, communities, collectivities and section would compete for the reserved quota. In such circumstances, the result would be obvious namely, those who belong to socially and educationally advanced sections would capture all the posts in the quota. This would leave the socially and educationally backward classes high and dry although they are not at all represented or are inadequately represented in the services, and the socially and educationally advanced classes or more than adequately represented in the services. It would, thus results in defeating the very object of the reservations in services, under Article 16(4). It would also provide for the socially and educationally advanced classes statutory reservations in the services in addition to their

traditional but non- statutory sent-percent reservations. It will, thus perpetuate the imbalance, and the inadequate reservations of the backward classes in the services. It is native to expect that the poor from the socially and educationally backward classes would be able to complete on equal terms with the poor from the socially and educationally advanced classes. There may be an equality of opportunity for the poor from both the socially advanced and backward classes. There will however, be no equality of results since the competing capacity of the two is unequal. The economic criterion will thus lead, in effect, to the virtual deletion of Article 16(4) from the constitution.

The Supreme Court upheld the said classification. However it must be noted that the classification there was not only on the ground of economic condition but was also based on the occupation of the family concerned. Parimoo's case[63] was a case under Article 16(4). On the test of backwardness the court has observed there as follows—

> *"It is not merely the educational backwardness or the social backwardness , the class identified as class as above must be both educationally and socially backward. In India, social and educational backwardness is further associated with economic backwardness and it is observed in Balaji's Case[64] referred to above that backwardness socially and educationally is ultimately and primarily due to poverty. But , if poverty is the exclusive test, a very large proportion of the population in India would have to be regarded as socially and educationally backward, and if reservation are made only on the ground of economic considerations , as untenable situation may arise because even in sectors which are recognized as socially and educationally advanced there are large pockets of poverty. In this country except for a small percentage of the population the people are generally poor some being more poor, other less poor. Therefore,*

when a social investigator tries to identify socially and educationally backward classes, he may do it with confidence they are bound to be poor. His chief concern is, therefore, to determine whether the class or group is socially and educationally backward. Though the two words 'Socially' and 'educationally' are used cumulatively for the purpose of describing the backward class as whole is educationally advanced, it is also socially advanced because of the formative effect of education on that class. The words 'advanced ' and 'backward' are only relative terms- there being several layers or strata of classes, hovering between advanced' and backward' and the difficult task is which class can be recognized out of these several layers are being socially and educationally backward"

It will be observed from the above that poverty as the sole test of backwardness for Article 16(4) was discarded by this court in the said decision. On the other hand, it is emphasized that the poverty in question should be the result of social and educational backwardness.

This point has elaborately been dealt with Chinnappa Reddy, J. in Vasanth Kumar's case[65] where the Learned Judge has taken pains to point out that although poverty is the dominant characteristic of all backwardness, it is not the cause of all backwardness.

We, therefore, see that every one of the three dimensions propounded by Weber is intimately and inextricably connected with economic position. However, we look at question of ' backwardness' whether from the angle of class, status or power, we find the economic factor at the bottom of it all and we find poverty , the culprit- cause and the dominant characteristic. It is therefore, clear that economic criterion by itself will not identify the backward classes under Article 16(4). The economic backwardness of the backward classes under Article 16(4) has to be on

account of their social and educational backwardness.

It has been pointed that so far as "Backward classes" are concerned, clause (4) of Article 16 is exhaustive of reservation meant of them. The only " backward classes" for which reservations are provided under the said clause is the socially backward class whose educational and economic backwardness is on account of social backwardness. A class which is not socially and educationally backward though economically or even educationally backward is not a backward class for a purposes of the said clause. What follows from these two conclusions is that reservation in posts can not be made in favour of any other class under the said clause, Further, the purpose of keeping reservations even in favour of the socially and educationally backward classes under clause (4), is not to alleviate poverty but to give it an adequate share in power.

Clause (1) of Article 16 may permit classification on economic criterion. The purpose of such classification, however, can only be to alleviate poverty or relieve unemployment. If this is so, no individual or section of the society satisfying the criterion can be denied its benefits- and particularly the backward classes with in the meaning clause(4) are excluded from the reservations kept on economic criterion under clause(1), it will amount to discrimination. Further the objects of reservation under the two clauses are different. While those failing under clause(1) from other than the backward classes, will continue to enjoy the reservations for ever, the backward classes can get the benefit of the reservation under clause (4) only so long as they are not adequately represented in the services. What is more those entering the services under clause (1) may belong to clauses which are adequately

are more than adequately represented in the services. The reservations for them alone under Article 16(1) would virtually defeat the purpose of Article 16(4) and would be contrary to it. No different result will, further, ensue even if the reservations are kept for all the seats will be captured only by the socially and educationally advanced classes. The two clauses of the Article have to be read consistently with each other so as to lead to harmonious results. Hence, so long as the socially backward classes and the effect of their social backwardness continue to exist , the reservation in the services on economic criterion alone would be impermissible either under clause (4) and clause(1) of Article 16.

REFERENCES

1. Agrawal H.O., Human Rights (2008, Allahabad) p. 308.
2. Ibid.
3. Ibid.
4. Section 5(2), The Protection of Human Rights (Amendment) Act, 2006.
5. Ibid. Section 5 (1)
6. Ibid
7. Ibid
8. Macfarlane, L.J., The Theory and Practice of Human Rights; (1985) p. 7.
9. Verma, J.S., The New Universe of Human Rights 91984, New Delhi) p.3.
10. David, P, The Internationalization of Human Rights, (1954, New Delhi) p. 1
11. Supra Note 1, p. 3
12. Basu, D.D., Human Rights in Constitutional Law. (1994, New Delhi) p. 5.
13. Supra Note 1, p. 5
14. Ibid. p. 5.
15. Ibid. p. 6.
16. Supra Note 1, p. 21
17. Ibid.
18. Ibid.
19. Ibid p. 22
20. Ibid.

21. Ibid. p. 23.
22. Ibid.
23. Ibid. p. 24.
24. AIR. SC 1996, p. 1239.
25. National Human rights Commission Vs. State of Arunachal Pradesh AIR SC 1234 at 1239.
26. Supra note 1, p. 143.
27. Annual Report of National Human Rights Commission for the year 2001- 2002. p. 53.
28. Ibid. p. 54.
29. Supra Note 1, p. 304
30. Ibid.
31. Ibid.
32. Id. p. 305.
33. Id. p. 306.
34. The Annual Report of the National Human Rights Commission 1999- 2000.p. 183.
35. Indira Sawhney Vs. Union, AIR 1993 SC 477at 638: 1993(1) SC 353: 1992 (6) J.T. (SC) 673: AIR 1992 SCW. 3682.
36. Ibid
37. Ibid.
38. Ibid
39. Ibid.
40. Ibid. p. 322.
41. Ibid. p. 323.
42. 1991 SCR 525: AIR 1951 Sc 226.
43. (1963) Supp.1. SCR 439: AIR 1963 SC 649.

44. 1973 (3) SCR 236: AIR 1973 SC 930.
45. 1985) Suppl. SCR352: AIR 1985 SC 1495.
46. AIR 1967 SC 1283.
47. AIR 1963 SC 649: 967(1) Supp. SCR 439..
48. 1968 (30 SCR 595: AIR 1968 SC 1379.
49. 1968 (3) SCR 595: AIR 1968 SC 1379.
50. 1972(3) SCR 247: AIR 1972 SC 1375.
51. 1973 (30 SCR 236: AIR 1973 SC 930.
52. AIR 1963 SC 649.
53. 1977 (1) SC 194 at 197, 198: AIR 1976 SC 2381.
54. AIR 1963 SC 649.
55. AIR 1951 SC 226.
56. AIR 1951 SC: 229.
57. AIR 1963 SC 649: AIR 1993 SC 477 at 650.
58. 1964 (6) SCR 368: AIR 1964 SC 1823.
59. AIR 1972 SC 1375.
60. 1977(10 SCR 194 at 197, 198: AIR 1976 SC 2381.
61. 1985 Suppl. SCR 352: AIR 1985 SC 1495.
62. AIR 1963 SC 649.
63. AIR 1985 SC 1495.
64. Dr. Awasthi & Kataria., Protection of Human Rights (1972, New Delhi). p. 324.
65. Ibid.

Chapter IX

ANALYSIS OF THE ROLE OF NATIONAL COMMISSION OF HUMAN RIGHTS IN PROMOTING THE DOCTRINE OF EQUALITY IN CASE OF SCHEDULED CASTE AND BACKWARD CLASSES

ANALYSIS OF THE ROLE OF NATIONAL COMMISSION OF HUMAN RIGHTS IN PROMOTING THE DOCTRINE OF EQUALITY IN CASE OF SCHEDULED CASTE AND BACKWARD CLASSES

Human Rights constitute the matrix of all fundamental rights that we have today. It includes right to democracy which includes right of equality, life and personal liberty, freedom of speech and expression, right against arbitrary arrest, freedom of conscience and religion and right for demanding enforcement of such guaranteed human rights. Right has no meaning. It has not been codified. It has been defined only in some religions and philosophies. Human rights are as old as human beings. Human rights are those birthrights without which no man can breathe. Human right means respect for dignity of human being. It is the mandatory function. Human rights can be enjoyed only when the state creates a machinery to ensure whether the right is enjoying. Human right contains economic, social, cultural, civil, and political rights of an individual which every individual possess against his state. Human Rights are also something referred to fundamental rights, basic rights, inherent rights, natural rights and birthrights.[1]

Section 2(d) defines 'human rights' as rights relating to life, liberty, equality and dignity of the individual, guaranteed by the Constitution, or embodied in the international covenants, and enforceable by courts in India.

R. J. Vincent defined human rights as; are the rights that everyone has.... by virtue of their very humanity. They are grounded in our appeal to human nature".

According to Scott Davidson, "the concept of human rights is closely connected with the protection of individuals from the exercise of state, government or authority in certain areas of their lives, it is also directed, towards the creation of societal conditions by the state in which individuals are to develop their fullest potential".

D. D. Basu says 'Human Rights as those minimum rights, which every individual must have against the state or other public authority by virtue of his being member of human family, irrespective of any other consideration".[2]

It is clear that Human Rights, whether recognized or not, belongs to all Human Beings at all times and in all places.

The Universal Declaration of Human Rights consist of preamble and thirty Articles setting forth the basic human rights and fundamental freedoms to which ail the human beings every where in the world are entitled without discrimination.[3]

Most of the rights described in UDHR have been made legally binding by two international Covenants[4] i.e. (a) Civil and Political Rights, and (b) Economic, Social and Cultural Rights.

Other major Conventions have since been adopted to protect the basic rights of people as freedom from torture, discrimination on grounds of race or sex and in case of children, from exploitation.

India is a sovereign, secular and democratic country as described in the preamble of Indian Constitution. The Indian Constitution recognizes the concept of human rights. The fundamental rights as enshrined in Part III of the Constitution are form of concept of human right:

- Article 14 talks about equality before law.
- Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, place or birth.
- Article 16 says about equal opportunity in matters of public employment.
- Article 20,21,22 provide for the freedom of life and liberty.
- Article 23 and 24 prohibits exploitation of the under privilege.
- Article 25 to 28 provides the right to religion including the right to profess practice and propagate any religion of a person's choice.

The NHRC was established on October 12, 1993. Its statute is contained in the Act, 1993, and is in conformity with the Paris principles, adopted at the first international workshop on the national institutions for the promotions and protection of human rights held in Paris in October 1991, and endorsed by the General Assembly of the UN in Resolution in 48/134 of December 20, 1993. The Commission is an embodiment of India's concern for the promotion and protection of human rights. It is an institution, which provides special focus on allegation of violation of Human Rights and seeks to provide quicker redressal.

NHRC constituted in 1993 has been armed with wide powers, including the powers to appoint its own investigating staff to probe violations of Human Rights. In fact, NHRC has been a very effective tool for Human Rights governance in the country. The Commission is empowered to:[5]

1. Enquire *suo motu* or on a petition presented to it by a victim or any person on his behalf into complaint of violation of Human Rights or negligence in the prevention of such violation by a public servant.

2. Visit any jail or any other institution under the control of the State Govt., where persons are detained or lodged for purpose of treatment, reformation or protection, to study the living conditions of the inmates.

3. Intervene in any proceeding involving any allegation of Human Rights pending before a court with the approval of such court.

4. Review the safe guards provided by the Constitution or any law for the time being in force for the protection of Human Rights and recommended measures for their effective implementation.

5. Review the factors, including act of terrorism that inhibits the enjoyment of Human Rights and recommend appropriate remedial measures.

6. Undertakes and promotes research in the field of Human Rights.

7. Encourage the efforts of Non Governmental Organizations (NGOs) and institutions working in the field of Human Rights etc, and

8. Such other function as it may consider necessary for the promotion of Human Rights.

The objective of NHRC Act under the Act is to provide for the constitution of a National Human Right Commission, State Human Rights Commission in states and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto.[6]

Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. The Incidents of custodial deaths often hit the headlines and exposes law enforcement officers to severe criticism. Unfortunately, reports from press, media and other activities organized by non-government organizations give reports on it. This conveys the worse impression of LEA agencies. Majority of the LEA are committed and motivated to their work but there are some LEA that does indulge in torture and brutalities. Despite elaborate legal provisions and detailed instructions prohibiting death in custody and abuse of power many LEA have developed a sense of immunity. They feel that their superior and sub-ordinate will patch their misdoings and white wash it. Death of the persons in any custody are neither unusual nor unknown not even totally preventable. Maximum number of custodial deaths results from custodial violence. Such deaths are not acceptable in a civilized society. Death in custody by custodial violence is the worst violation of human rights. It is not necessary all the custodial deaths occurred in custody because of custodial violence.

Some times death occurred because of natural reasons such as old age, disease, accident, suicide, over dosages of drugs and alcohol etc. Some

times custodial death occurs because of negligence in providing the medical aid to accused or keeping the accused in the same lock-ups with the infected accused. Still the custodial violence is increasing as the chart shows. NHRC gives us annual report, which has done a lot to crush human right violation since 1994. It has shown us how worse the condition of jail is. Moreover the reports are discussed in parliament and law is made accordingly, in against human rights violation which are happening allover our country. The statistics are been used by NGOs & media to check, transparent the truth and mobilize people and state towards the end of human rights violation. However, it lacks behind in its power. The reasons behind it are that it can merely recommend. More or less its 90% of recommendations were considered. Custom officers, forest officers, Revenue Officers, CBI, BSF and others come into the meaning of a LEA. Law Enforcement Agency is one of the means by which the state seeks to meet its obligation to protect some of the fundamental human rights-right to life, liberty and security of persons, right to a fair trial, equal protection of law. Indeed effective law enforcement agency will enable people to enjoy fully not only their civil and political rights but also social and economic rights.

The law enforcement agency has a duty to see that the people in a democratic society enjoy their rights freely. Man has certain rights, which are universal, inalienable, inherent, and fundamental and basic, the enjoyment of which is the foundation of freedom, justice and peace in the state. But history of mankind hitherto shows that man has not been allowed to enjoy the rights by diverse means of administrative, political, social, economical, cultural, fiscal exertions of don't. But paradoxical as it may sound, it is a universal phenomenon that the LEA;

have been criticized in addition to condemned for committing acts which are just contrary to the cherished ideal expressed in the above words. The basic cause of such an unfortunate situation is that the powers which are given to the LEA to fulfill their legitimate and essential functions are capable of being abused by them to torture mankind, to destroy lives and property. The literature on Indian Law Enforcement Agency is full of adverse comments made upon them for their dishonesty, corruption, and unscrupulous methods in investigation and general lack of in efficiency. It is not a lie that the organization of police is one of the most hated organizations of our society. Because of their hideous acts of atrocities, brutalities, cruelties and gross violation of human rights, sometimes they are termed as "Criminals in Uniform" The police as a part of the administrative setup and often as the coercive weapon of the governments in the power have a lot of powers invested in them. The improper use or better the misuse of power and authority by the police has repeatedly, been found to be causally responsible for the denial of some of these inalienable rights of man in the past and even today. In doing so, some police officers do not understand that they are violating the human rights of people for whose welfare and protection service is created and maintained. The Law Enforcement Agency (LEA) are not to violate human rights; rather they are legally bound to protect them. However, it often happens that instead of implementing and protecting law, LEA itself use to violate it, which undermines its image.

Before discussing custodial crimes, it's necessary to understand what custody is? Generally speaking the word 'custody'[7] in the Cr. P.C. always mean judicial custody, save only where the context clearly indicates either that it is police custody or that the magistrate has been

given liberty to decide what the custody shall be. Custody referred to in section 337(3) Cr P.C. must be taken to be jail or judicial custody and not police custody. The word custody[8] in section 27 of Indian Evidence Act, 1872, does not mean format custody. An accused is in police custody when he is under survienance of the police and cannot break away from the company of the police officer and get away.

According to Guardianship of Infants Act, 1886 section 5 the word 'custody' denotes rights and duties in relation to an infant regarded as an indivisible whole, that is to say, the charge of infant's person coupled with the right to determine the manner of infant's upbringing.

Payment of Wages Act, 1936 under section 7(2) (c) defines custody for keeping in 'care'. The incidence of torture and brutality oftener it the headlines of Daily Newspaper. The most common of methods of torture are severe beatings, hung upside down and electric shocks many torture victims were arrested in connection with criminal investigations, and tortured to extract information and confessions crime which result in death. Torture usually denotes intense suffering, physical, mental and psychological, aimed at forcing to do or say something against his or her will. It means breaking down severe physical pain and extreme psychological pressure.

The Concept of torture is very old. The charge of brutal custodial violence by the police, often resulting in the death of the arrestees, is not new, though it was not widely publicized, very much prevalent in the past. Until the end of 18th century, physical torture was legal and officially admitted as method of interrogation in many of the countries. It was only after the Second World War that the torture, jut like other

modes of violations of Human Rights figured prominently and became a matter of International Concern. The prohibition of torture and other cruel and degrading treatment has been advocated ever since the adoption of Universal Declaration of Human Rights[9] in 1948.

According to Art 5 of UDHR 1948, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". 1948 Convention not only prohibits torture but also forbids inhuman action on a less microscopic scale-cruel in human, degrading treatment or punishment.

As early as in 1850, the Torture Commission of India, attempted to define "torture" and said' "Torture was fair by which guilt is punished or confession is extorted".

The commission for investigation of alleged cases of torture in the Madras Presidency (Commonly referred to as the Torture Commission) in its report, 1850 highlighted that police torture was quite prevalent in the ten Madras Presidency. From 1960 onwards it could be seen that the intention of the torture was to make the general population keep silent and it is this kind of torture which tries to curls and throttle democratic systems. It is to be noted that Torture has been made a punishable under section 330 and 331 of the Indian Penal Code. Torture is rightly considered as the most heinous violation of the Human rights. As it constitutes the very denial of the essence of Human Rights, namely, recognition that each living being has a personality of its own which has to be respected.

Custodial death means death of a person in the custody of any law enforcement officers. LEA includes types of officers like custom officer, revenue officer, forest officer, army officer, CBI, CRP, BSF police officers and judicial officer. But the maximum numbers of custodial deaths are taking place in police custody and judicial custody. The custodial, death has been divided in to two parts. One is "judicial custody" Custodial violence and abuse of police power is not only peculiar to this country, but, it is widespread. It is a calculated assault on human dignity and whenever human dignity is wounded civilization takes a step backward-flag of humanity must on each such occasion fly half-mast.[10] It has been concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948, which marked emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degradation treatment or punishment". Despite the pious declaration, the crime continues unabated, though, every civilized nation shows its concern and takes steps for its eradication.[11] In essence the Court suggested the police to depend on "wits" and not on "fists" and no "culture", not on torture in their investigations. The Court advised the Government to re-educate the police force and to weed them out of their sadistic tendencies and inculcate in them the respect for human person and punish those responsible for custodial torture.[12]

The judicial custody means when the police arrest any person and produce before the Magistrate after arrestee produce before the Magistrate he is under judicial custody. If any event occurred in jail that

becomes cause of death is called death under judicial custody. Similarly before arrestee producing before the magistrate any event occurred in police custody if it is cause of death that is called under police custody.

Here some cases are described where compensation is granted by the state on the recommendation of NHRC:

The Commission was informed by the Dy. Commissioner of Police (South Distt.) Delhi of the custodial death of Zakir in the police station of Pushp Vihar, New Delhi on 12.05.2001. In view of the conclusion reached in the report of Magisterial Inquiry on custodial death of Zakir leading to the prosecution of the delinquent police officers by the Govt. of National Capital Territory of Delhi, the commission found it as a fit case for award of immediate interim relief u/s 18(3) of the Protection of Human Rights Act., 1993 and issued show cause notice to the Govt. of National Capital Territory of Delhi.

In response the government of National Capital Territory of Delhi in its report had indicated that the accused had already been charge-sheeted and the case pen-ding in the Court for verdict and in the circumstances the State Govt. had no objection for the proposal for payment of interim relief.

On consideration of the aforesaid report, the Commission directed that the Govt. of National Capital Territory of Delhi to pay an amount of Rs. 2.00 lakhs as immediate interim relief to the next of kin of the deceased. Pursuant to the Commission's directions, a compliance report received from Govt. of National Capital Territory of Delhi indicated that a cheque for a sum of Rs. 2.00 lakhs had been delivered to Ms. Jannat

wife of Late Shri Zakir and also submitted proof of the payment to the Commission. Since the directions of the Commission had been complied with and compensation paid to the next of the kin of the deceased, the case was closed. The Commission initiated proceedings in this case on the basis of an intimation received from the Superintendent of Police, Ambedkar Nagar, Uttar Pradesh indicating that the death of Bhujai occurred on 30.05.1994 while in police custody. CB/CID in its report had also confirmed that Shri Bhujai had access to the poison in police custody for which 11 police officials of Police Station District Ambedkar Nagar, Uttar Pradesh had been found responsible for committing offence and the charge sheet against the said erring police officials was also filed.

The Commission while taking note of the death of Bhujai while in custody noticed that several public servants had been prosecuted on the basis of the finding of the CB/CID which had found them responsible for the death of Bhujai in custody and directed the Govt. of U.P. to pay Rs. 1.00 lakh to the next of kin of the deceased.

Pursuant to the Commission's directions, the Supdt. of Police, Ambedkar Nagar, U.P. had submitted the report indicating that the compensation of Rs. 1.00 lakh had been paid to Shri Roshan Lal son and legal heir of the deceased on 07.09.2003 and proof of the payment had also been furnished to the Commission. Since the directions of the commission had been complied with and compensation said to the next of the kin of the deceased, the case was closed.

The matter relates to the death of Shri Sanjay Sharma an under-trial prisoner on 21 March, 2001 in District 3ail, Mathura. The matter was

considered by the Commission when it found that there had been negligence on the part of authorities in providing Sanjay Sharma medical treatment. In response to the Show Cause Notice, the State Government of U.P. had sent the report stating that Dr. A.K.Yadav, Medical Officer had been issued a Show Cause Notice and a criminal case registered against errant police official's was also under investigation. On perusal of the report, the Commission held that even otherwise tendency of civil or criminal proceedings or investigation is no ground to drop the matter of payment of any immediate interim relief, which the Commission grants on the basis of preponderance. The Commission also further notice that admittedly Show Cause Notice to the concerned Doctor had been issued about the negligence in giving treatment to the deceased and a criminal case had also been admittedly registered against the errant police officials. That made out a prima facie ground for the Commission to hold that there had been violation of human rights relating to the life of the deceased. Having regard to the facts and circumstances of the case, the Commission directed the state Govt. of U.P. to make the payment of Rs. 50,000/- to the next of the kin of the deceased as an immediate interim relief and also to intimate the status report of the cases registered. The Compliance report in the matter is awaited.

The matter relates to the custodial death of Madan Bhilala in the custody of Balawar Police Station, District Khargaon, Madhya Pradesh on 27.04,2001. On perusal of the post-mortem report the Commission noticed that the cause of death was Hypo-volemic shock due to dehydration. The Commission also observed that as per findings of the Magisterial Enquiry, the deceased was kept in illegal detention since

21.04,2001 by the police of P.S, Balwara, District Khargon, M.P. and that police was responsible for the death of the deceased. In response to Commission's Show Cause Notice to the Govt. of M.P. as to why Rs. 1.00 lakh as immediate interim relief be not given to the next of the kin of the deceased and appropriate action taken against the errant police officials, the Govt. of M.P. had requested the Commission to consider the matter on the ground that the death in custody of Madan Bhilala was due to dehydration only.

On further consideration of the mater, the Commission did not find any ground to recall its earlier decision and review the matter. The findings recorded in the report of the Magisterial Enquiry indicated that death was caused on 27.04.2001 due to dehydration caused by Diarrhoea as indicated by the Doctor's report. Thus these findings clearly indicated not merely illegal detention of the deceased but also negligence in medical care while he was in detention. The Commission, therefore, directed Govt. of M.P. to pay a sum of Rs. 25,000/- as immediate interim relief to the heirs of the deceased. Pursuant to the Commission's directions, the Govt. of M.P. had sent the report indicating that an amount of Rs, 25,000/- had been paid to the legal heirs of the deceased and proof of the payment had also been furnished to the Commission. Since the directions of the Commission had been complied with and compensation paid to the next of the kin of the deceased, the case was closed.

Custodial Death of Shri Parveen Dev and Bikhari Dev in the Central Jail, Saharsa, Bihar was alarming. The Commission was informed about the death of an under-trial prisoner Parveen Dev and Bikhari Dev from

the District Magistrate, Saharsa, and Bihar. On perusal of the Magisterial Inquiry Report, the Commission noted that inquiry into the matter was conducted by SDM. Saharsa, Bihar and it was found that the deceased Bikhari Dev, an under-trial prisoner in the Central Jail, Saharsa, Bihar had inflicted injuries with the blade on his respiratory tract as he was upset due to false implication by the police. The Magistrate concluded that Bikhari Dev was mentally upset and had committed suicide in the Jail.

Subsequently, as directed by the Commission, the petition received from the wife of the deceased alleging that her husband was murdered by co-prisoner Chhotu Niyan in connivance with the police was also transmitted to the District Magistrate, Saharsa for his comments. In response, the DM, Saharsa in his report had stated that criminal case was registered against Chhotu Miyan co-prisoner, Nand Kumar Das, Assistant Clerk, Jail Ram Sakal Yadav and Ram Dev. Warder, and after investigation, offence u/s 302/201/120B was found to have been established against them.

On perusal of the report, the Commission was of the view that the deceased Parveen Dev and Bikhari Dev who was an under-trial prisoner in Central Jail, Saharsa, Biahr was done to death by co-prisoner and Jail staff. The Jail authorities were also found to be negligent, as they did not take proper care for the protection and security of the deceased, who was inmate of the jail. The Commission therefore directed the State Govt. of Bihar to show cause as to why an immediate interim Relief us/18(3) of the Act be not granted to the next of the kin of the deceased and also asked the District Magistrate, Saharsa to intimate the current

status of (i) case Cr. No. 270/2000 and (ii) department action taken against erring jail staff. The reports from the Chief Secretary, Govt. of Bihar and the District Magistrate, Saharsa, Bihar are awaited.

Ever since the NHRC was established in the year of 1994, it was deeply concerned on the need to end violation of human rights. In its efforts to crush custodial violence, the commission issued number of guidelines from time to time and took several measures. The last guideline was given by NHRC is in year 1997.

District magistrates and superintendent of police in every district were directed to report to the Commission with in 24 hours of its occurrence. Failure to send such reports, it was made clear would lead to a presumption that efforts were being made to suppress the facts. The Commission had been receiving reports of deaths in prisons from different channels from all parts of the country. Hence through this instruction, the state government were directed to send reports of death taking place in judicial custody, also, with in the given time frame of 24 hours. Scrutiny of reports revealed that proper postmortem is not being carried out; leaving an impression that attempt may be made to suppress the truth. The repot should not merely affirm the police version of the incident.

The postmortem report is the most valuable record on the basis of which conclusion about the death is drawn. State governments were directed to introduce video- filming of postmortem examination w.e.f. 01 October 1995. The intimation of death in custody is to be sent along with the postmortem report, videography of the postmortem examination, inquest, magisterial enquiry and chemical analysis reports etc. The

Commission felt that the model a autopsy form presently used are not comprehensive and allows scope for doubts and manipulation and decided to receive the autopsy form to plug the loopholes and to make it more incisive and purposeful. The U. N. model autopsy protocol was partly incorporated in the revised form. The cassettes of videography received are closely scrutinized along with postmortem report by the investigation division of the NHRC in consultation with forensic experts out of the panel of doctors drawn from the government medical colleges or institutions to avoid inordinate delay in the submission of sending the reports like postmortem, magisterial enquiry etc. The Commission issued fresh guidelines in December 2001, enjoining the states to send the required reports with in two months of the incident.

The custodial death cell was created in September 1, 2001 with in the investigation division to scrutiny incidences of reported custodial violence cases. This cell was entrusted with the task of obtaining the relevant documents from the concerned authorities and the critically analyzing those forwarded materials with the view to assisting the Commission in deciding further course of action required to be taken .the Commission depending on the merit of the cases could award interim relief to the next of kin of the victim or recommend criminal/department action against the delinquent officials or close the cases in event of nothing adverse emerging from the report. Early action be taken on the suggestion of the Indian law Commission to the effect that a section 114(B) be inserted in the Indian evidence act 1872, to introduce a rebuttal presumption that injuries sustained by a person in police custody may be presumed to have been caused by a police officer.

Section 197 of Code of Criminal Procedure needs to be amended on the basis of Indian law commission's recommendation, to obviate the necessity for governmental sanction for the prosecution of the police officers, where a prima facie case has been established, in an inquiry conducted by a session's judge of the commission of custodial offence. As suggested by the national police commission, there should be mandatory inquiry be a session's judge in each case of custodial death, rape or grievous hurt.

The Commission referred to the directions of the Supreme Court in the case of *Joginder Singh vs. state of Uttar Pradesh* and also highlighted the detailed instructions of the Supreme Court in a subsequent order in *D.K. Basu vs. State of West Bengal*. The Central as well as the State Governments were asked to give utmost importance and serious attention to the instructions in the second case, not least because it has stipulated that failure to carry out the directives in the matter of arrest that would attract penalties for commitments of contempt of the orders of the court.

In the light of allegations of custodial violence being received, the Commission felt it necessary to recommend to the government that the country become a party to the 1984 UN convention against torture and other cruel, inhuman or degrading treatment or punishment. The then chairperson had written a letter to the then Prime Minister on the subject. On the intervention of the Commission, the government representatives signed the convention on 14 October 1997, and now await the ratification of the convention. The Commission is pursuing the issue with the government for early action.

Disturbed by the increasing reports of violence in police lock-ups, the Commission took a decision that its officers will make surprise visits to police lock-ups. Investigating officers during the course of their visits to the states are undertaken such surprise visits to the lock-ups and recommendations based on their observations are being sent to the concerned authorities for their remedial action.

As arrest involves restrictions of liberty of a person and infringes the basic rights of liberty. The Constitution requires a just, fair and reasonable procedure established by law under which alone such deprivation of liberty is permissible. The arrest could also result in abuse of authority and possible custodial violence. Instructions were issued on 'pre-arrest', 'arrest' and 'post-arrest' in consonance with the rights enumerated in the Constitution and Supreme Court judgments on the subject.

The need for systematic reform in the police has been consistent theme of the Commission for the all these years, emphasizing with increasing urgency that they must be major police reform in the country, if the human right situation is to improve. The Commission urged the government to act upon certain recommendations of the second police reforms Commission that submitted it report in 1980.as there has been apparent lack of follow up on the letter of the Home Minister written to the Chief Minister of all states in April 1997, the Commission impleaded as a party in the case before the supreme court of India, which relates specifically to the implementation of certain recommendations of the NPC. The Commission felt that many of ills afflicting the police can only be cured through major structural change

through better training and modernization of the force. The Commission is looking forward to the verdict of the Supreme Court as it will have far reaching impact on the future of the police of this country or else both good governance and respect for human rights will continue to be causalities.

With the increasing number of complaints being received on custodial violence, the Commission considered it necessary to promote appropriate in house machinery in the state police headquarters to deal with this problem. An additional director general of police /inspector general of police (human rights) is Incharge of the cell to monitor and cause enquires into the complaint being forwarded by the Commission. He is also acquired to create awareness organize training on human rights. Any further measure to deal with the perception with the public authority, abuse, and misuse of power and follow human rights that includes custodial violence, chief justice of the high courts in states have been requested to consider issue directions to the district judge to constitute a DCA in their respective jurisdiction/ with himself as the Chairperson and deputy Commissioner and Senior Superintendent of Police as member of the committee, to examine the grievances of the public.

Visits to jails- the Commission has intensified its efforts to improve the living conditions in jails and other institutions under the control of state governments where the persons are lodged or detained for the purpose of treatment, reformation and protection. A series of measures were initiated aimed at reducing, congestion, improving sanitation and hygiene standards and upgrading the facilities. Commission's members

and officials are visiting different jails in the country to bring about improvement in their standards. Complaints of any custodial violence are also being looked into with serious concern and action suggested by way of interim relief, as well as punitive action against delinquent officials recommended.

Analysis is regularly undertaken as to cause of deaths in jail custody, based on reports from jail authorities, magisterial enquiry, video filming received are being closely scrutinized.

The Commission takes prompt action on complaints. The annual reports NHRC contain instances of complaints of police excesses including custodial deaths, torture and police harassment, among others, that have been dealt with and the action taken by the commission. The report for the year 2000-01 contains annexure of statements showing details of custodial deaths/rapes reported by the states, and of the cases admitted for disposal.

Two training project were jointly undertaken by the Commission with the British Council on "Human Rights Investigation and Interviewing Skills" and "Improving Custody Management".

The first, a year long programmer was carried out at different regions with the aim and objective to promote better understanding and practices of a human rights culture in the context of various international covenants, Indian constitution and legal frame work. It emphasized why human rights afford individual protection in law, freedom of choice and importance of human beings free from oppression and torture.

The second, a yearlong project aimed at better protection of human rights of citizens when under detention in police or judicial custody, mainly free from custodial violence. The likely legal consequences for LEO who infringes the rights of the arrestee in custody was specially focused.

Another project on "Prevention on Torture" renamed 'Better Custody Management' in collaboration with the British Council is under way. This project will pilot a community-based approach and build trust between various Institutions like police lawyers, judiciary, jail administration, human rights activist, academicians, media, to increase awareness of legal rights and remedies available to victims. A situational study on incidence of custodial crimes and their form were undertaken in different State by Stakeholder State by the networking partners and they analyzed.

In the year 1994-95 total numbers of custody deaths were 162 out which 111 are of police custody and 51 are of judicial custody. Bihar has the highest cases recorded in police custodial death, which his 17 and 33 cases of judicial custody are recorded in Delhi.

In the year 1995-96 the total number of deaths was 447 out of which 139 cases of police custody and 308 cases of judicial custody. [13] cases of death in police custody in Gujarat and 67 cases of death in judicial custody were in Bihar are highest in this year.

In 1996-97 the deaths in police custody were recorded. Where as in Judicial Custody 700 cases were there and 3 compensations were granted. U.P hits the chart of death in police custody with 32 cases,

Whereas, Maharashtra in judicial custody with 180 cases. And in total Maharashtra has the highest of 201 cases.

In 1997-98, the deaths in Police Custody were 191 with only compensation. And in Judicial custody there were 807 cases were recorded with only compensation. Andhra Pradesh has maximum of police custody deaths with 21 cases. And U.P has 172 cases in judicial custody. And in the total U.P hits the chart with 108 cases.

In 1998-99 the deaths in police custody has 180 cases with 25 compensations and death in judicial custody has 1106 cases with 31 compensations. Andhra Pradesh has Maximum of Police custody death cases with 25 and Uttar Pradesh has 222 Judicial custody deaths and the maximum number of custodial deaths were recorded in Uttar Pradesh were 242 cases.

In 1999-00, here we have 177 deaths cases in Police custody with 11 compensations and 10 compensations in judicial custody deaths with 916 cases. Maharashtra has highest police custody death cases i.e. 30 and Bihar has 155 death cases in judicial custody. The total number of custodial deaths were recorded in Bihar were 162 cases. In 2000-01, police custody has 127 deaths cases and 4 compensations and judicial custody has 910 death cases and 3 compensations. Where as, Maharashtra has maximum of Police custody death cases i.e 19 and Bihar with 137 judicial custody death cases. In this, year Bihar has maximum of custodial 139 death cases. In 2001-02, police custody has 165 death cases with seven compensations where as judicial custody has 910 death cases with 10 compensations. Where as Maharashtra has maximum of 27 deaths in police custody where as Bihar have 137death

in judicial custody. Here also Bihar also a highest of Custodial deaths 139. Looking at the number of cases of custodial death which is 7256. We are taking only four states, which have high ratio of custodial death.

If human dignity is the core of civilized society; much less the human perception, the provision as to arrest and subsequent handcuffing, terrorizing and inhumane as they are, need re-orientation and call for formulation of moderate rules of procedure which can fulfill the legitimate requirements, but not hazardous to or violative of Human Right.[13] It is quite a matter for grave concern that attitudinal change in a positive manner regarding public cooperation in Police functioning is not reflected at the end of the training. If the people treat Police as aliens it is one thing, but if the Police themselves treat people as aliens it is a matter for serious concern.[14]

There is no significant change in the attitude in respect of purpose of punishment, new concepts in Police work, correctional concepts and treatment of victims and freedom of press. In these areas, it is desirable or even necessary that there must be a positive change in their attitude.

Lastly, the NHRC is only recommendatory body and complaint machines. It is a mandatory body even though its presence has not deterred the law enforcement agencies to act accordingly to their way. The NHRC has been not able to crush custodial death cases. Number of complaints has gone up to 72,107 in 2001-2002 from 496 in 1993-94.

The NHRC took several steps. A fast tract system of complaint machines has been adopted to deal with the heavy load of case work, apart from attending to individual complaints. The Commission has also

recommended the systematic reform in police. Time to time guidelines/instructions has been given but they are not being followed by the concerned authorities. Like in the case of spot inquiry, less than 5% of their custodial cases had their spot inquiry. Another 95% of the cases wait for states report. State does not want its man to be put on trail and don't want to give compensation on behalf of them. So it whitewashes their misdoing. The report should reach NHRC within two months but it usually appears late or in some cases they have to close the case in absence of report. Always quick reports are clear and neat but as the facts are being removed from the case, it takes some time.

We have other thing also videotapes, which is very strong evidence against the accused. Only 2% videotapes are being seen. Guidelines say 10% of them. The professionals are not washing these videotapes. It is also noted that the video tapes are not good quality, filming is not proper, which can vary from two minutes to four hours. Another thing is that, we are not aware that the person is the same whose name is on the file or in other words video tapes can be changed. Some time they sent blank videotapes and can say they are damage or corrupt. Due to this, compensation is not granted. The case in which the legal detention takes place and man is beaten up in name of interrogation and when he returns, he dies off. These cases should be taken into consideration.

The cases of natural death and suicide should be looked in depth. The main cause of natural death in jails is said to be old age or some other communicable disease like TB.

The pre-medical check-up should be there. If a person is infected, he should be hospitalized. If the person dies off, following things to be noted:-

1) His medical report at the time of admission in jail.

2) Date of infection.

3) Medical records of OPD.

4) Post-mortem with videographer should be done.

This is a case of negligence, if he is well before the admission in the jail. So it is full responsibility of jail authorities to take care of him. So this kind of case should be neglected.

In the suicide cases, the following things can be asked:

1) Why he committed a suicide?

2) By what means?

3) How did he get that thing in spite vigilance of the law enforcement agencies?

4) His post-mortem report and video tapes.

So it is the full responsibility of law-enforcement agencies to look after him. If we take all the cases in judicial custody to be natural death as most of the time, it is said, but what about the police custody. Here man comes in the custody and dies off within 24 hours. This can only happen when:

1) He was tortured inhumanly? and

2) He was illegally detained?

If he was hurt at the time of arrest then it is a case of clear-cut negligence. These facts cannot be denied but still NHRC is not carrying spot inquiry because don't judge some of the cases to be important. And at last, NHRC can not check the custodial death done in custody of arm forces because of Section 19. The aim of any civilized society should be to secure dignity to every individual. There cannot be dignity without equality of status and opportunity. The absence of equal opportunities is any walk of social life is a denial of equal status and equal participation in the affair of the society sand, therefore, of its equal membership. The dignity of the individual is dented and direct proportion to his deprivation of the access to social means. The democratic foundations are missing when equal opportunity to grow , govern, and give one's best to the society is denied to sizeable section of the society. The deprivation of the opportunities may be direct or indirect as when the wherewithal's to avail of them are denied. Nevertheless, the consequences are as potent.[15]

Inequality, ill-favours, fraternity and unity remains a dream without fraternity. The goal enumerated in the preamble of the Constitution, of fraternity assuring the dignity of the individual and the unity and integrity of the nation must, therefore, remain unattainable so long as the equality of opportunity is not ensured to all. Likewise, the social and political justice pledged by the preamble of the constitution to be secured to all citizens, will remain a myth unless first economic justice is guaranteed to all. The liberty of thought and expression also, will

remain on paper in the face of economic deprivations. A remunerative occupation is a means not only of economic upliftment but also of installing in the individuals self-assurance, self- esteem, self-worthiness. It also accords him a status and dignity as an independent and useful member of the society. It enables him to participate in the affairs of the society without dependence on, or domination by others, and on an equal plane depending upon the nature security and remuneration of the occupation. Employment is an important and by far the dominant remunerative occupation and when it is with the government, semi-government, or government- controlled organization, it has as an edge. It is coupled with power and prestige of varying degrees and nature, depending upon the establishment and the post. The employment under the state, by itself, may, many times help achieve the triple goal of social economic and political justice.

The employment whether Private or public, thus, is a means of social leveling and when it is public, is also means of directly participating in the running of the affairs of the society, a deliberate attempt to secure it to those who were designedly denied the same in the past, is an attempt to do social and economic justice to them as ordained by the preamble of the Constitution. The equality contemplated by Article14 and other cognate. Article 15(1), 16(1), 29(2) and 38(2) of the constitution, is secured not only when equals are treated equally but also when unequals are treated unequally. Conversely, when unequals are treated equally, the mandate of equality before law is breached to bring about equality between the unequals. Therefore, it is necessary to adopt positive measures to abolish inequality. The equalizing measures will have to use the some tools by which inequality was introduced and perpetuated.

Otherwise, equalization will not be of the unequals. Article 14 which guarantees equality before law would by itself, without any other provision in the Constitution, be enough to validate such equalizing measures. The founders of the constitution, however, thought it advisable to incorporate another provision viz. Article 16 specifically providing for equality of opportunity in matters of public employment. Further they emphasized in clause (4) thereof that for equalizing the employment opportunities in the services under the state, the state may adopt positive measures for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the state. The trinity of the goals of the constitution, viz, secularism socialism, and democracy can not be realized unless all sections of the society participate in the state power equally, irrespective of their caste, community, race religion and sex and all discrimination s in the sharing of the state power made on those grounds are eliminated by positive measures.

Under Article 16 (4) the reservation in the state employment is to be provided for a "class of people" which must be "backward" and "in the opinion of the state" Under Article 46, the state is required to "promote with social care" the "educational and economic interests" of the "weaker sections" of the people and "in particular" of the scheduled castes and scheduled Tribes, and "to protect" them from "social injustice" and "all form of exploitation" Since in the present case, the court is not concerned with the reservations in favour of the Scheduled Castes and Scheduled Tribes, it is not necessary to refer to Article 335 except to point out that, it in terms provided there that the claims of Scheduled Castes and Scheduled Tribes in the services are to be taken

into consideration, Consistently with the maintenance of efficacy of administration. It must, therefore, means that the claims of other backward class of citizens and weaker sections must also e considered consistently with the maintenance of the efficacy, for, whomsoever, therefore, reservation is made the efficacy of administration is not to be sacrificed, whatever the efficacy may mean. That is the mandate of the Constitution itself.

The various provisions in the constitution relating to reservation, therefore, acknowledge that reservation is an integral part of equality where inequalities exist. Further, they accept the reality of inequalities and of the existence of unequal social groups in the Indian society. They are described variously as "Socially and educationally backward classes" Article 15(4) and Article 340, "Backward class" Article 16(4) and "weaker sections of the people" Article 46. The provisions of the constitution also direct that the unequal representation in the services be remedied by taking measures aimed at providing employment to the discriminated class by whatever different expressions the said class is described.

The objectives of reservation may be spelt out variously, as the U.S Supreme Court has stated in different celebrated cases viz, *Oliver Brown et. al vs. Board of education Topeka et al*[16] *Spottswood Thomas Bolling et al vs. C Nelvin Sharpe et al*[17], *Marco Defunis et al vs. Charles Odegared*[18], Regents of *University of California V. Allan Bakke*,[19] *H Earl Fullilove et al vs. Philp M'Kluznick*[20] and *Metro Broadcasting Inc. vs. Federal Communications Commission*[21] rendered as late as on June 27, 1990, the reservation or affirmative action may be undertaken to

remove the "persisting or present and continuing effects of posts discrimination" to lift the limitation on access to equal opportunities to grant opportunity for full participation in the governance of the society to recognize the discharge "special obligations" towards the disadvantaged and discriminated social group "to over come substantial chronic under representation of a social group" or "to serve the important governmental objectives".

In a society such as ours where there exist forward and backward, higher and lower social groups, the first step to achieve social integration is to bring the lower or backward social groups to the level of the forward or higher social groups Unless all social groups are brought on an equal cultural plane, social intercourse among the groups will be an impossibility. Inter–marriage as a matter of course and without inhibitions is by for the most potent means of effecting social integration. Inter-marriage between different social groups would not be possible unless all groups attain the same cultural level. Even in the same social group marriages take place only between individuals who are on the same cultural plane. Culture is a cumulative product of economic and educational attainments leading to social accomplishment and refinement of mind, moral s and taste. Employment and particularly the governmental employment promotes economic and social advancement which is turn also leads to educational advancement is not necessarily accompanied by cultural growth, it is also equally true that without them, cultural advancement is difficult. Employment is thus an important aid for culture growth. To achieve total unity and integration of the nation, reservations in employment are, therefore, imperative, in the present state of our society.

Under the Constitution, the reservation in employment in favour of backward classes are not intended either to be indiscriminate or permanent. Article 16 (4) which provides for reservations, also at the same time prescribes their limits and conditions. In the first place, the reservations are not to be kept in favour of every backward class of citizens. It is only that backward class of citizens which, in the opinion of the state, is "not adequately represented" in the services under the state, which is entitled to the benefit of the reservations. Secondly, and this follows from the first, even that backward class of citizens would cease to be the beneficiary of the reservation policy, the moment the state comes to the conclusion that it is adequately represented in the services. The first order dated 13th August, 1990, acknowledges the fact that our society is multiple and undulating, and expressly refer to the second backward classes Commission, popularly known as Mandal Commission and its report submitted to the government of India on 31st December, 1980 and the purpose for which the Commission was appointed, viz, for early achievement of "the objective of the social justice" enshrined in the constitution. The order then states that the government have considered carefully, the report of the commission and the recommendations of the Commission in "present context" regarding the benefits to be extended the "socially and educationally Backward Classes"(SEBCs) as opined by the commission. The order further declares that the governments are of the clear view that the outset "certain weightage is to be provided to such classes in the services of the Union and other public under takings" with this preface, the order proceeds to:

(1) Provide for reservation of 27% of the vacancies in civil posts and

services under the union Government to SEBCs.

(2) Restrict the reservations to the vacancies to be filled in by direct recruitment only (and thus by necessary implication excludes reservations in recruitment by promotion)

(3) Leave the procedure to be followed for enforcing reservation to be detailed in instructions to be issued separately.

(4) Make it clear that those belonging to SEBCs who enter into services in the open i.e. unreserved category are not to be counted for the purpose of calculating the reserved quota of 27%.

(5) Specify that in the first phase of reservation, it is only SEBCs castes and communities which are common to both the lists given in the report of the Mandal Commission and the list prepared by the state governments, would be beneficiaries of the reservations.

(6) State that the list of such common castes and communities will be issued by the government separately.

(7) Give effect to the reservation from 7th August, 1990, and

(8) Explain that the reservation quota will apply not only to the services under the government of India but also to the services in the public sector under takings and financial institutions including the public sector bank. With the majority decision of this Court in *State of Kerala V. N.M Thomas.*[22] having confirmed the minority opinion and Subba Rao, J. In *T. Devadasan vs. Union of India*[23]. the settled Judicial view is that clause (4) of Article 16 is not an exception to clause (1) thereof, but is merely an emphatic way of

stating that is implicit in clause (1).

Equality postulates not merely legal equality but also real equality. The equality of opportunity has to be distinguished from the equality of results. The various provision of our constitution and particularly those of Articles 38, 46, 335, 338 and 340 together with the preamble show that the right to equality enshrined in our Constitution is not merely a formal right or a vacuous declaration. It is a positive right, and the state is under an obligation to undertake measures to make it real and effectual. A mere formal declaration of the right would not make unequals equal. To enable all to compete with each other on equal plane, it is necessary to take positive measures to equip the disadvantaged and the handicapped to bring them to the level of the fortunate advantaged. Articles 14 and 16(1) no doubt would by themselves permit such positive measures in favour of the disadvantaged to make real the equality guaranteed by them. However, as pointed out by Dr. Ambedkar while replying to the debate on the provision in the constituent Assembly, it become necessary to incorporate clause(4) in Article 16 at the insistence of the members of the Assembly and to allay all apprehensions in that behalf. Thus, what was otherwise clear in clause (1) where the expression "equality of opportunity" is not used in a formal but in a positive sense, was made explicit in clause (4), so that there was no mistake in understanding either the real import of the "right to equality" enshrined in the Constitution or the intentions of the Constitution-framers in that behalf. Thus, what was otherwise clear in clear in clause(1) where the expression "equality of opportunity" is not used in a formal but in a positive sense, was made explicit in clause(4), so that there was no mistake in understanding either the real import of

the "right to equality" enshrined in the Constitution or the intentions of the Constitution-framers in that behalf . As Dr Ambedkar has stated in the same reply, the purpose of the clause(4) was to emphasize that "there shall be reservation look into, so to say in the administration.

The reservations can take various forms whether they are made for backward or other classes. They may consist of preference, concessions, exemptions, extra facilities etc. or of an exclusive quota in appointments as in the present case. When measures other than an exclusive quota for appointments are adopted, they form part of the reservation measures or are ancillary to or necessary for availing of the reservation, the backward classes have to look for them to Article 16(4) and the other classes to Article 16(1).

What would be the content of the phrase "Backward Class" in Article 16(4) of the Constitution and whether caste by itself could constitute a class and whether economic criterion by itself could identify a class for Article 16(4) and whether "Backward Class" in Article 16(4) would include the weaker sections" mentioned in Article 46 as well. The courts have, as will be instantly, equated the expression "Backward classes of citizens" (SEBCs" found I Article 15 (4) and Article 340, even the impugned orders have used the expression "Socially and educationally backward Classes of citizens" The impugned orders have chosen to give the benefit of reservation expressly to SEBCs and since it is not suggested that SEBCs are not "backward class of citizens" within the meaning of Article 16(4),

In this connection, a reference may first be made to Article 335 of the Constitution. There is no doubt that backward classes under Article

16(4) would also include Scheduled Castes and Scheduled Tribes for whose entry into services, provision is also made under Article 335. There is however, a difference in the language of the two Articles. Whereas, the provision of Article 16(4) is couched in an enabling language, that of Article 335 is in a mandatory caste. It appears that it became necessary to make the additional provision of reservations for Scheduled Castes and Scheduled Tribes under the Article 335 because for them the reservations in services were to be made as obligatory as reservations in the house of people and the Legislative Assemblies under Article 330 and 332, respectively .When Court remember that Article 330, 332 and 335 belong to the family of Articles in part xvi which makes "special provisions relating to Certain classes" the additional that obligatory provision for Scheduled Castes and Scheduled Tribes under Article 335 becomes meaningful. It is probably because of the mandate of Article 335 and the level of backwardness of the Scheduled Castes and Scheduled Tribes , the most backward among the backward classes that it also became necessary to caution and emphasize in the same vein, that the imperative claims of the Scheduled Castes and Scheduled Tribes shall be taken into consideration consistently with the efficacy of the administration, and not by sacrificing it. It can not however, be doubted that the same considerations will have to prevail while making, provisions for reservation in favour of all backward classes under Article 16(4).

The Apex Court may analyze Article 16 in the light of the question. In the first instance, it is necessary to note that neither clauses (1) and (2) of Article 16 read together, nor clause (2) of Article 29 prohibits discrimination and, therefore, classification, which is not made only on

the ground of religion, race, caste, sex descent, place of birth, residence or any of them. They do not prevent classification, if religion, race, caste, etc. are other grounds or considerations germane for the purpose for which it is made. Secondly, Clause (1) and (2) of Article 16 prevent discrimination against individuals and not against classes of citizens. Thirdly, clause(4) of Article 16 enables the state to make special provision in favour of any backward "class" of citizens and not in favour of citizens who can be classified as backward. The emphasis is on "class of citizens" and not on "citizens" Fourthly, as has already been pointed out the class of citizens under Article 16 (4) has not only to be backward but also a class which is not adequately represented in the services in the state. Fifthly, when the court remembered that a scheduled Castes and Scheduled Tribes are also the members of the backward classes of citizens with in the meaning of Article 16(4), the nature of backwardness of the backward class citizens is implicit in Article 16(4) itself. Further, part xvi of the Constitution which makes special provision under Article 338 for National Commission for Scheduled Castes and Scheduled Tribes for investigating their conditions, makes a similar provision under Article 340 for appointment of Commission to investigate the conditions also of "socially and educationally backward classes of citizens" The two provision leave no doubt about the kind of backwardness that the constitution takes care of in Article 16(4). What is more clause(4) of Article 15 which was added after the decisions in the *State of Madras vs. Srimathi Champakam Deorajan etc.*[24] Nothing in Article 15 or in clause(2) of Article 29, shall prevent that state from making any special provision for the advancement of any "Socially and educationally backward classes of citizens or for the scheduled castes

and Scheduled Tribes" The significance of this amendment should not be lost sight of in groups "Socially and educationally backward classes" with scheduled Castes and scheduled Tribes" When it is remembered that Articles 341 and 342 enables the president to specify by notification, the scheduled castes, and scheduled Tribes, it is such specifications from time to time may be from the socially and educationally backward classes or from classes whose economic backwardness is on account of their social and educational backwardness.

In *M.R Balaji vs. State of Mysore*,[25] what fell for consideration was Article 15(4), and on the language of the said Article, it was held by this court that the backwardness contemplated by the said Article was both Social and educational. In *Janki Prasad Parmoo vs. State of Jummu and Kashmir*,[26] which was a case under Article 16(4), this court read "backward class of citizens" in Article 16(4) as Socially and educationally "backward class of citizens". Although Justice Palekar who delivered the judgment for the Court, proceeded to equate the two expressions on the assumption that it was well-settled that the expression "any socially and educationally backward classes of citizens" in Article 15(4). It is true that no decision prior to this decision had in terms sought to equate the two expressions, to that extent the said statement can be faulted as it is sought to be done before the Apex Court.

In *K.C Vasanth Kumar vs. State of Keral*,[27] the court was called upon to express opinion on the issue of reservations which may serve as a guideline to the Commission which the government of Karnataka

proposed to appoint for examining the question of affording better employment and educational opportunities to the Scheduled Castes and Scheduled Tribes and other backward classes. Hence, the interpretation of the expression "Socially and educationally backward classes" under Article 16(4) and of the expression "backward class of citizens" under article 15(4) and their co- relation, fell for consideration directly. The five Judges of the Bench with the exceptions of Chief Justice Chandrachud expressed their opinion on these two expressions. Desai J. held that "Courts have more or less veered round to the view that in order to be socially and educationally backward classes, the group must have the same indicia as Scheduled Caste and Scheduled Tribes". The Learned judge then proceeded to deal with what, according to him, was a narrow question, viz, whether caste label should be sufficient to identify social and educational backwardness. However, it appear that Learned Judge proceeded on the footing that expression "Socially and educationally backward classes of citizens". Chinnappa Reddy, J, dealt with the two expressions a little extensively and came to the discussion as follows:

"Now, it is suggested that socially and educationally backward classes of citizens and the Scheduled Castes and the Scheduled Tribes for whom special provision for advancement is contemplated by Article 15(4) are distinct and separate from the backward classes of citizens who are inadequately represented in the services under the state for whom reservation of posts and appointments is contemplated by Article 16(4). The 'backward class of citizens' referred to in Article 16(4), despite the short description, are the same as 'the socially and educationally backward classes of citizens and the scheduled Caste and the scheduled

Tribes'. So fully described in Article 15(4), Vide, *Triloknath Tiku vs. State of Jummu and Kashmir*[28] and other cases" Sen, J. also appears to have proceeded on the footing that the two expressions, viz, "socially and educationally backward classes" under Article 15(4) and "Backward class of citizens" under Article 16(4) are synonymous. Venkataramiah J held that "Article 15(4) and Article 16(4) are intended for the benefit of those who belongs to caste, communities which are traditionally disfavoured and which have suffered societal discrimination in the past". The other factors such as physical disability, poverty place of habitation etc. according to the learned judge were never in the contemplation of the makers of the constitution while enacting these clauses" The Learned Judge has held that "while relief may be given in such cases under Article 14. Article 15(1) and Article 16(1) by adopting a rational Principle of classification, Article 14,Article 15(4) and Article 16(4) can not be applies to them" The learned Judge has further held that "it is now accepted that the expressions 'socially and educationally backward classes of citizens' and 'the scheduled Castes and Scheduled Tribes' in Article 15(4) of the Constitution together are equivalent to 'backward class of citizens' in Article 16(4).

There is, therefore, no doubt that the expression' backward class of citizens' is wider and include it." Socially and educationally backward class of citizens" and Scheduled Castes and Scheduled Tribes"

Whether the social and educational backwardness of the other backward classes has to be akin to or of the same level as that of the Scheduled Castes and scheduled Tribes. It is true that some decisions of Court such as *M.R.Balaji V. State of Mysore*[29] and State of Andhra Pradesh V. P.

Sagar,[30] have taken the view that the backwardness of the backward class under Article 16(4) being Social and educational, must be similar to be backwardness from which the scheduled castes and scheduled tribes suffer. In Balaji's case it is stated.

"It seems fairly clear that backward classes of citizens for whom special provision is authorized to be made are, by Article 15(4) itself, treated as being similar to be Scheduled Castes and Scheduled Tribes which have been defined were known to be backward and the Constitution makers felt no doubt that special provision had to be made for their advancement. It was realized that in the Indian society there were other classes of citizens who were equally, are may be somewhat less, backward than the Scheduled Castes and Scheduled Tribes and it is thought that some special provision ought to be made even for them". After referring to the provisions of Articles 338(3), 340(1), 341 and 342, the Court proceeded to hold as follows:

> *"It would thus be seen that this provision contemplates that some Backward Classes may be the Presidential order be included in Scheduled Castes in Scheduled Tribes. That helps to bring out the point that Backward Classes for whose improvement special provision is contemplated by Article 15(4) are in the matter of their backwardness comparable to Scheduled Castes and Scheduled Tribes"*

Similarity of Social and educational backwardness was accepted in *State of Andhra Pradesh V. P Sagar.*[31] However, in state of *Andhra Pradesh V. US Balram,*[32] the earlier pointed out that the decisions do not lay down that backwardness of the other backward classes must be exactly similar in all respects to that of the scheduled Castes and scheduled

Tribes. Further in *Janki Prasad Parimoo V, State of Jummu and Kashmir*,[33] the test laid down in Balaji's Case[34] has been explained in following words:

Indeed all sectors in the rural areas deserve encouragement but whereas the former by their enthusiasm for education can get on social stream by positive efforts by the state. That accounts for the raison d'etre of the principle explained in Balaji's Case which pointed out that backward classes for whose improvement special provision was contemplated by Article 15(4) must be comparable to Scheduled Castes and Scheduled Tribes who are standing example of backwardness socially and educationally. If those examples are steadily kept before the mind the difficulty in determining which other classes should be ranked as backward classes will be considerably eased.

In *Kumar K.S. Jaysree v. State of Kerala*,[35] it is stated:

> *"Backward classes for whose improvement special provisions are contemplated by Article 15(4) are in the matter of their backwardness comparable to scheduled Castes and Scheduled Tribes. This Court has emphasized in decisions that the backwardness under Article 15(4) must be both social and educational. The concept of backwardness in Article 15(4) is not intended to be relative in the sense that classes who are backward in relation to the most advanced classes of society should included in it"*

The test of comparable backwardness laid down in Balaji's Case[36] has not been and is not to be , understood to mean that backwardness of the other backward classes has to be of the same degree as or identical in all respects to, that of the scheduled castes and Scheduled Tribes. At the

same time the backwardness is not to be measured in terms of the backwardness of the forward classes and those who are less forward than the forward or to be classified as backward. The expression "Backward class of citizens" has been used in Article 16(4) in a particular context taking into consideration the social history of this country. The expression is used to denote those classes in the society which could not advance socially and educationally because taboos and handicaps created by the society in the past or on account geographical or other similar factors. In fact, the "expression backward classes" could not be adequately encompassed in any particular formula and hence, even Dr. Ambedkar while replying to the debate.

It will have, therefore, to be held that the backwardness of the backward classes other than the Scheduled Castes and tribes who are entitled to the benefit of the reservations under Article 16(40, need not be exactly similar in all respects to the backwardness of the Scheduled Castes and Scheduled Tribes. That is not necessary that the social , educational and economic backwardness of the other backward classes should be exactly of the same kind and degree as that of the Scheduled Castes and Scheduled Tribes is recognized by the Various provisions of the Constitution itself since they make difference between the Scheduled Castes and Scheduled Tribes on the one hand, and other "Socially and educationally backward classes are backward exactly in all respects as the Scheduled Castes and Scheduled Tribes, the President has the power to notify them as Scheduled Castes and Scheduled tribes, and they would not continue to be the other backward classes. The nature of their backwardness, however, will have to be mainly social resulting in their educational and economic backwardness as that of the Scheduled Castes

and Scheduled Tribes.

There is no doubt that no classification can validly be made only on the basis of caste just as it can not be made only on the basis of religion race, sex, descent place of birth or any of them, the same being prohibited by Article 16(2), What is however required to be done for the purposes of the Article 16(4) not classification but identification. The identification is of the backward classes of the citizens, which have to be socially and, therefore, educationally and economically backward. Any factor whether caste race, religion occupation habitation etc. which may have been responsible for the social and educational backwardness, would naturally also supply the basis for identifying such classes not because they belong to particular religion race, caste, occupation area, etc, but because they are socially and educationally backward classes.

In view of the above meanings ascribed to the terms, it can hardly be argued that caste is not a class and can form a separate class. If therefore, a caste is also a backward ward class within the meaning of Article 16(4), there is nothing in the said Article or any other provision of the constitution, to prevent the conferment of the special benefits under that Article on said caste, Hence, it can hardly be argued that caste in no circumstances may form the basis of or be a relevant consideration of backward class of citizens.

The context in which the amendment to Article 15 was made being sufficiently illuminating on the subject, may first be noticed in *Champakam's Case.*[37] the seven Judge Bench of this court struck down the classification made on basis of caste, race, and religion for the purposes of admission to educational institutions on the ground that

Article 15 did not contain a clause such as clause (4) of article 16. The necessary corollary of that view is that with the clause like (4) of Article16, the enumeration of backward classes on the basis of caste, race, or religion would not be bad, and that it exactly what was held by the same Bench in a decision delivered on the same day in the case of *B. Venkataranama v. State of Madras*[38] This was a case directly under Article 16(4)unlike Champakam which was under Article 15. In this case, the Communal G.O of the Madras Government made reservation of posts for Harijan and backward Hindus as well as for other communities, viz, Muslims Christians, non-Brahmin Hindus and Brahmins. The Court upheld the reservations in favour of Harijans and backward. Hindus holding that those reserved posts were so reserved not on the ground of religion, race, caste etc. but because of the necessary for making a provision for reservation of such posts in favour of a backward class of citizens. The Court however, struck down the reservations in favour of other than Harijans and backward Hindus on the ground that it was not possible to say that those classes were backward classes. It can be seen this decision that the classification of the backward classes into Harijan and backward Hindus was upheld by the court as being permissible under Article 16(4).

The court then observed that there is no gainsaying the fact that there are numerous castes in this country which are socially and educationally backward. To ignore their existence is to ignore the facts of life. However, the court there after proceeds also to state that the government should not proceed on the basis that once a caste is considered as a backward class, it should continue to be a backward class for all times. Such an approach would defeat the very purpose of

the reservation.

In *Balram's Case*[39] it was held that entire caste can be socially and educationally backward and in such circumstances reservation can be on the basis of caste not because they are castes but because they are socially and educationally backward classes. It was also held that reservation can also be on the basis of population of the different castes separately as social and educational backward classes. It was further held that if the candidates from social and educational backward castes secured 50 percent or more seats of merit in the general pool, the list of backward classes need not be invalidated but the government should be asked to review it.

In *K.S Jaysree v. State of Kerala* [40] it was observed as follows:

"In ascertaining social backwardness of a class of citizens it may not be irrelevant to consider the caste of the group of citizens caste can not, however, be made the sole or dominant test. Social backwardness is in the ultimate analysis the result of poverty to a large extent. Social backwardness which results from poverty is likely to be aggravated by consideration of their caste. This shows the relevance of both caste and poverty in determining the backwardness of citizens. Poverty by itself is not the determining factor of social backwardness. Poverty is relevant in the context of social backwardness. The commission found that the lower income group constitutes socially and educationally backward classes. The basis of the reservation is not income but social and educational backwardness determined on the basis of relevant criteria. If any classification of backward classes of citizens is based solely on caste on citizens it will perpetuate the vice of caste system. Again, if the

solely on poverty it will not be logical"

In *K.S Vasanth Kumar v. State of Karnataka*[41], Chinappa Reddy J, stated as follows:

"Any view of the caste system, class or cursory, will at once reveal the firm links which the caste system has with economic power. Land and Learning, two of the primary sources of economic power in India, have till recently been the monopoly of the superior castes. Occupational skills were practiced by the middle castes and in the economic system prevailing till now they could rank in the system next only to the castes constituting the landed and learned gentry. The lowest in the hierarchy were those who were assigned the meanest tasks, the out-castes who wielded no economic power. The position of a caste in rural society is more often than not mirrored in the economic power wielded by it and vice- versa. Social hierarchy and economic position exhibit an undisputable mutuality. The lower, the caste, the poorer its members.

Bernnan, J, observed that the claim that the law must be "colour-blind" is more and aspiration rather than a description of reality and that any claim that the use of racial criteria is barred by the plain language of the statute must fall in light of the remedial purposes of Title viz (of the Civil Rights Act, 1964) and its legislative history. On the contrary he observed, that the prior decisions of the court strongly suggested that Title VI did not prohibit the remedial use of the race where such action is constitutionally permissible. In this connection it will be worthwhile to quote two passages from the Learned Judge's opinion in that case. While dealing with equal protection clause in the fourteenth Amendment, the Learned Judge observed as follows:

"The assertion of human equality is closely associated with the proposition with differences in colour or creed, birth or status , are neither significant nor relevant to way in which person should be treated. None the less, the position that such factors must be 'constitutionally an irrelevance' summed up by the shorthand phrase ' our constitution is colour blind' has never been adopted by this court as the proper meaning of the Equal Protection Cause. Indeed, we have expressly rejected this proposition on a number of occasions. Our cases have always implied that an 'overriding statutory purpose' could be found that would justify racial classifications. More recently, this court unanimously reserved the Georgia Supreme Court which had held that a desegregation plan vouluntarily adopted by a local school board which assigned students on the basis of races, was per se invalid because it was not colour blind. We conclude , therefore, that racial classifications are not per se invalid under the fourteenth Amendment. Accordingly we turn to the problem of articulating what our role should be in reviewing state action that expressly classifies by race".

The conclusion that state educational institution may constitutionally adopt admissions programs designed to avoid exclusion of historically disadvantaged minorities , even when such programs explicitly take race into account finds direct support in our cases construing congressional legislation designed to overcome the present effects of the past discrimination.

Venkataramiah, J in the same decision observed as follows:

"An examination of the question in the background of the Indian social conditions shows that the expression' backward classes' used in the constitution referred only to those who were born in particular castes or have belonged to particular races or tribes or religious which were

backward."

The caste system is prevalent only among the Hindus, and other religions are free from it. Jains have never considered themselves as a part from Hindus. For all practical purposes and from all counts, there are no socially and educationally backward classes in the Jain community for those who embraced it most belonged to the higher castes. As regard Buddhists, if the Apex Court exclude those who embraced Buddhism along with Dr, Ambedkar in 1955, the population of Buddhist is negligible. If However, the Apex Court include the new converts who have came to be known as *Nav- Buddhists*, admittedly almost all of them are from the scheduled Castes and denied the benefit of reservation on the ground that they had no longer remained the lower castes among the Hindus qualifying to be included among the scheduled Castes. On account of their agitation, perverse, reasoning was set right and today the Nav-Buddhists continue to get the benefit of reservation on the ground that their low status in society as the backward classes did not change of their religion.

Article 46 enjoins upon the state to promote with special care, the educational and economic interest of the "weaker sections" of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and to protect them from social injustice and all forms of exploitation. The expression "weaker sections" of the people is obviously wider than the expression "backward classes" of citizens in Article 16(4) which is only a part of the weaker sections. The expression Backward Classes" of citizens is used there in a particular context which is germane to the reservation in the services under the state for which that Article has been enacted. It has also been pointed out that in that

context, read with section 15(4), and 340, the said expression means only those classes which are socially backward and those educational and economic backwardness is on account of their social backwardness and which are not adequately represented in the services under the state. Hence, the expression "backward class" of citizens in Article 16(4) does not comprise all the weaker sections of the people, but only those which are socially and, therefore, educationally backward, and which are inadequately represented in the services. The expression "weaker sections of the people" used in Article 46, however, is not confined to the aforesaid classes only but also includes other backward classes as well, whether they are socially and educationally backward or not and whether they are adequately represented in the services or not. What is further, the expression "weaker sections" of the people does not necessary refer to a group or a class. The expression can also take wit in its compass, individuals who constitute weaker sections or weaker parts of the society. This weakness may be on account of the present impoverishment arising out of physical or social handicaps. The instances of such weaker sections other than Scheduled castes and Scheduled Tribes and socially and educationally backward classes may be varied, viz, flood earthquake, cyclone, fire, famine and project affected persons, war and riot torn persons physically handicapped persons those without any or adequate means of livelihood , and those live below the poverty line, slum dwellers, etc. Hence, the expression" weaker sections" is wider than the expression" backward classes" of citizens. "Socially and educationally backward classes" and Scheduled Castes and Scheduled Tribes. It connotes all sections of the society who are rendered weaker due to various causes Article 46 is aimed at

promoting their educational and economic interests and protecting them from social injustice and exploitation. This obligation cast on the state is consistent both with the Preamble as well as Article 38 of the Constitution.

However, the provisions of Article 46 should not be confused with those of Article 16(4) and hence the expression "weaker sections of the people" in Article 46 should not missed up with the expression "Backward Class of citizens" under Article 16(4). The purpose of Article 16(4) is limited. It is also give adequate representation in the services of state to that class which has no such representation. Hence, Article 16(4) carves out a particular class of people and individuals from the "weaker sections" and the class it carves out is the one which does not have adequate representation in the services under the state. The concept of "weaker sections" in Article 46 has no such limitation. In the first instance, the individuals belonging to the weaker sections may not form a class and they may be weaker as individuals only. Secondly, their weakness may not be the result of past social and educational backwardness of discrimination. Thirdly, even if they belong to an identifiable class but that class is represented in the services of the state adequately, as individuals forming weaker section, they may be entitled to the benefits of the measures taken under Article 46, but not to the reservations under Article 16(4). Thus, not only the concept of "weaker sections" under Article 46 is different from that of the backward class" of citizens in Article16 (4), but the proposal of the two is also different. One is for the limited purpose of the reservation and hence suffers from limitations, while the other is for all purposes under Article 46, which purposes or other than reservation under Article 16(4). While those

entitled to benefits under Article 16(4) may also be entitled to avail of the measures taken under Article 46, the converse is not true. If this is borne in mind, the reasons why mere poverty or economic consideration can not be a criterion for identifying backward classes of citizens under Article 16(4) would be more clear.

Economic backwardness is the bane of the majority of the people in this country. There are poor sections in all the castes and communities. Poverty runs across all barriers. The nature and degree of economic backwardness and its causes and effects, however vary from section of the populace. Even the poor among the higher castes are socially as superior to the lower caste as the rich among the higher caste. Their Economic backwardness is not on account of social backwardness. The educational backwardness of some individuals among them may be an account of their poverty in which case economic case alone may enable them to gain an equal capacity to compete with others. On the other hand, those who are socially backward such as the lower castes or occupational groups are also educationally backward on account of their social backwardness, their economic backwardness being the consequence of both their social and educational backwardness. Their educational backwardness is not on account of their economic backwardness alone. It is mainly on account of their social backwardness. Hence, mere economic aid will not enable them to compete with others and particularly with those who are socially advanced, their social backwardness. It is necessary to bear this vital distinction in mind to understand the true import of the expression "backwardness class of citizens" in Article 16(4). If it is mere educational backwardness or were economic backwardness that was

intended to be specially catered to, there as was no need to make a provision for reservation in employment in the services the state. That could be taken care of under Article 15(4), 38, and 46. The provision for reservation for appointment under Article 16(4) is not aimed at economic upliftment or alleviation of poverty. Article 16(4) is specially designed to give a due share in the state power to those who have remained out of it mainly on account of their social and, therefore, educational and economic backwardness. The backwardness that is contemplated by Article 16(4) is the backwardness which is both the cause and consequence of non- representation in the administration of the country. All other kind of backwardness irrelevant for the purpose of the said Article. Further, the backwardness has to be a backwardness of the whole class and not of some individuals belonging to the class, which individuals may be educationally or economically backward, but the class to which they belong may be socially forward and adequately or even more than adequately represented in the services, the reservation under Article 16(4) is not for individuals but to a class which must be both backward and inadequately represented in the services , such individuals would not be beneficiaries of reservation under Article 16(4). It is further difficult to come across a "class" which is socially and educationally advanced but is economically backward or which is not adequately represented in the services of the state on accounts on its economic backwardness. Hence, mere economic or mere educational backwardness which is not the result of social backwardness can not be a criterion of backwardness for Article 16(4).

That only economic backwardness was not in the contemplation of the constitution is made further clear by the fact that at time of first

Amendment to the constitution which added clause (4) to Article 15 of the Constitution, one of the members. Prof. K.T. Shah, wanted the elimination of the word "classes" in and the addition of the word "economically "to the qualifiers of the term "Backward classes". This Amendment was not accepted. Prime Minister Nehru him self stated that the additional of the word "economically" would put the language of the Article at variance with that of Article 340. He added that socially is a much wider term including many things and certainly including "economically" This shows that economic consideration alone as the basis of backwardness was not only not intended but positively discarded.

The reasons for discarding economic criterion as the sole test of backwardness are obvious. If poverty alone is made the test, the poor from all castes, communities, collectivities and section would compete for the reserved quota .In such circumstances, the result would be obvious namely, those who belong to socially and educationally advanced sections would capture all the posts in the quota. This would leave the socially and educationally backward classes high and dry although they are not at all represented or are inadequately represented in the services, and the socially and educationally advanced classes or more than adequately represented in the services. It would, thus results in defeating the very object of the reservations in services, under Article 16(4). It would also provide for the socially and educationally advanced classes statutory reservations in the services in addition to their traditional but non- statutory sent- percent reservations. It will, thus perpetuate the imbalance, and the inadequate reservations of the backward classes in the services. It is native to expect that the poor from

the socially and educationally backward classes would be able to complete on equal terms with the poor from the socially and educationally advanced classes. There may be an equality of opportunity for the poor from both the socially advanced and backward classes. There will however, be no equality of results since the competing capacity of the two is unequal. The economic criterion will thus lead, in effect, to the virtual deletion of Article 16(4) from the Constitution.

The Supreme Court upheld the said classification. However it must be noted that the classification there was not only on the ground of economic condition but was also based on the occupation of the family concerned.

Parimoo's case[42] was a case under Article 16(4). On the test of backwardness, the court has observed as follows:

> *"It is not merely the educational backwardness or the social backwardness, the class identified as class as above must be both educationally and socially backward. In India, social and educational backwardness is further associated with economic backwardness and it is observed in Balaji's case[43] referred to above that backwardness socially and educationally is ultimately and primarily due to poverty. But, if poverty is the exclusive test, a very large proportion of the population in India would have to be regarded as socially and educationally backward, and if reservation are made only on the ground of economic considerations, as untenable situation may arise because even in sectors which are recognized as socially and educationally advanced there are large pockets of poverty. In this country except for a small percentage of the population the people are generally poor some being poorer, other less poor. Therefore, when a social investigator tries to identify socially and educationally backward classes, he may do it with confidence they are*

bound to be poor. His chief concern is, therefore, to determine whether the class or group is socially and educationally backward. Though the two words 'Socially' and 'educationally' are used cumulatively for the purpose of describing the backward class as whole is educationally advanced, it is also socially advanced because of the formative effect of education on that class. The words 'advanced ' and 'backward' are only relative terms- there being several layers or strata of classes, hovering between advanced' and backward' and the difficult task is which class can be recognized out of these several layers are being socially and educationally backward".

It will be observed from the above that poverty as the sole test of backwardness for Article 16(4) was discarded by this court in the said decision. On the other hand, it is emphasized that the poverty in question should be the result of social and educational backwardness.

This point has elaborately been dealt with *Chinnappa Reddy, J. in Vasanth Kumar's case*[44] where the Learned Judge has taken pains to point out that although poverty is the dominant characteristic of all backwardness, it is not the cause of all backwardness.

We, therefore, see that every one of the three dimensions propounded by Weber is intimately and inextricably connected with economic position. However, we look at question of 'backwardness' whether from the angle of class, status or power, we find the economic factor at the bottom of it all and we find poverty, the culprit- cause and the dominant characteristic. It is therefore; clear that economic criterion by itself will not identify the backward classes under Article 16(4). The economic backwardness of the backward classes under Article 16(4) has to be on

account of their social and educational backwardness.

It has been pointed that so far as "Backward classes" are concerned, clause (4) of Article 16 is exhaustive of reservation meant of them. The only " backward classes" for which reservations are provided under the said clause is the socially backward class whose educational and economic backwardness is on account of social backwardness. A class which is not socially and educationally backward though economically or even educationally backward is not a backward class for purposes of the said clause. What follows from these two conclusions is that reservation in posts can not be made in favor of any other class under the said clause, Further, the purpose of keeping reservations even in favor of the socially and educationally backward classes under clause (4), is not to alleviate poverty but to give it an adequate share in power.

Clause (1) of Article 16 may permit classification on economic criterion. The purpose of such classification, however, can only be to alleviate poverty or relieve unemployment. If this is so, no individual or section of the society satisfying the criterion can be denied its benefits and particularly the backward classes with in the meaning clause(4) are excluded from the reservations kept on economic criterion under clause(1), it will amount to discrimination. Further the objects of reservation under the two clauses are different. While those failing under clause(1) from other than the backward classes, will continue to enjoy the reservations for ever, the backward classes can get the benefit of the reservation under clause (4) only so long as they are not adequately represented in the services. What is more those entering the services under clause (1) may belong to clauses which are adequately

are more than adequately represented in the services. The reservations for them alone under Article 16(1) would virtually defeat the purpose of Article 16(4) and would be contrary to it. No different result will, further, ensue even if the reservations are kept for all the seats will be captured only by the socially and educationally advanced classes. The two clauses of the Article have to be read consistently with each other so as to lead to harmonious results. Hence, so long as the socially backward classes and the effect of their social backwardness continue to exist, the reservation in the services on economic criterion alone would be impermissible either under clause (4) and clause(1) of Article 16.

Hence, no reservation of posts in services under the state, based exclusively on economic criterion would be valid under clause (1) of Article 16 of the Constitution

REFERENCES:

1. See The Protection of Human Rights Act, 1993.
2. Ibid
3. Art.1, UDHR UN Doc/1948.
4. UN Covenants on ICPR & ICSEC, Dec 16, 1966, UN Doc/1966.
5. Supra Note 1
6. Ibid
7. Sec. 337(3), Cr. P.C. Act, 1973.
8. Sec. 27, The Indian Evidence Act, 1872.
9. Ibid.
10. D.K. Basu Vs. Sate of West Bengal, AIR, 1997, SC 610.
11. A.K. Sahdev Vs. Ramesh Nanji Shah, 1998, Cri LJ 2645 (Bom.)
12. See 1999 Cri. LJ Section 36 at p. 40.
13. Id at p. 95
14. M. Srinivasan, "Role of Training in changing the attitude of Police Constabulary Recruits in Tamil Nadu", The Indian Police Journal, Vol. LII No.3, July-September 2005, p. 37.
15. Article 73 of the Constitution of India.
16. Article 253of the Constitution of India.
17. AIR. 1997 SC p. 3011.
18. Id at p. 3015.

19. AIR SC p. 625.

20. Deepak Vs. Competent Authority, Engineering College Pune, AIR 1997 Bombay 1 at pp. 2, 3.

21 Indira Sawhney Vs. Union of India, AIR 1993 SC 477 at 638.

22. 1976 (1) SCR 906, AIR 1976 SC 490.

23. 1964 (4) SCR 680, AIR 1964 SC 179.

24. 1951 SCR 525, AIR 1951 SC 226.

25. (1963) Supp.1 SCR

26 Macfarlane L.J., The Theory and Practice of Human Rights (1985, New Delhi) p. 7

27 Verma J.S., The New Universe of Human rights (1984, New Delhi) p. 3

28 David P., The Internationalization of Human Rights (1954, New Delhi) p. 1

29 Ibid

30 Basu D.D., Human Rights in Constitutional Law (1994, New Delhi) p. 5

31 Agrawal H.O., Human Rights (2008, Allahabad) p. 6

32 The establishment of a Commission on Human rights was recommended in 1945 by the Preparatory commission of the United Nations in order to deal with those Human rights issues which could not be resolved during the original drafting of the U.N. Charter.

33 Ibid

34 Twice in 1999 during the crisis in the former Yugoslavia, in 1994 over the atrocities in Rwanda, in 1999 to discuss the East Timor situation and in 2000 Concerning violations of Palestinian's human rights by Israel.

35 Economic and Social Council, Official Records; Ist year Ist Session (1946), Annexure, P. 148.

36 Supra Note 31, p. 22

37 General Assembly Resolution 60/ 251, March 15, 2006

38 AIR SC, 1996, p. 1239.

39 National Human rights Commission Vs. State of Arunachal Pradesh, AIR 1996 SC 1234 at 1239.

40 Ibid

41 Annual Report of National Human Rights Commission for the year 2001-02, p. 53,

42 Ibid, p. 54.

43 Report of the Secretary- General on internally Displaced person. February 14, 1992, Para, 17.

44 D.K Basu Vs. The State of West Bengal, Supreme Court Cases, 1997 (1) 416.

45 1987 (2) SCR 710.

46 1991 SCC (3) 471.

Chapter X

ROLE OF SOCIAL REFORMERS, EDUCATIONISTS AND LEGAL ACTIVISTS IN REFORMING THE STATUS OF SCHEDULED CASTES AND BACKWARD CLASSES

ROLE OF SOCIAL REFORMERS, EDUCATIONISTS AND LEGAL ACTIVISTS IN REFORMING THE STATUS OF SCHEDULED CASTES AND BACKWARD CLASSES

Since ancient times, there have been efforts by enlightened Indians to bring about equality through social and religious reforms, e.g. Lord Buddha (5th century BC), Mahavir (5th century BC), Ashoka (2nd century BC), Shankara (7th century AD.) etc. In the beginning of the nineteenth century, a new process of social reforms started which received an impetus at the time of independence movement in 20th century. A pioneer among these reforms was Raja Mohan Roy. He compiled and edited the Hindu personal law of marriage, inheritance, religious worship, women's status, women's property and caste system by introducing the most liberal principles of justice and equality. He worked out a synthesis of eastern and western social values and postulates against the common background of humanity.[1] He also started a movement for the emancipation of the oppressed classes and urged a return to the original *Vedanta* and for a total rejection of all the religious and social impurities that has crept into Indian society.

The first group of the liberal social reformers consists of Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Behramji Malabari, Justice Mahadev Govind Ranade, G.K. Deodhar, Marhashi Karve, Durgaram Mehtaji Narmadashankar, Dalpatram, Lalshankar Umiyashankar and Mahipatram Rupram. The second group of the revivalists consists of the name of the Swami Vevekanand, Swami Dayanand Saraswati, Mrs. Annie Besant and Mahatma Gandhi. There were some Muslim social

reformers who also did their best to improve the lot of women, To name a few, Sir syed Ahmad Khan, Badruddin Tayyabjee, Syed Imam and *Hydari*. Most of the social reformers to uplift and restore women's glory through preaching, press and plateform. Among them a few, notable reformists are Raja Ram Mohan Roy, Iswarchandra Vidya Sagar, Swami Dayananda, Vivekanand, Kandukuri Veeresalingam, Durgabai Deshmukh, Jyotiba Phule and Periyar E.V. Rajaram Mohan Roy succeeded in making Viceroy Lord William Bentick, to declare the Sati system illegal.

Dr Ambedkar followed the path of Mahatma Jyotiba Phule who led him to the weakest among the weakests. He appreciated the basic laws of social dynamics. One of these fundamentals was that social revolution must begin from the lowest strata of the society. Only the resurrection of the lowest classes and strata could below up the then Indian society. Without an iota of doubt, it can be claimed relentless efforts of the leaders of these two group paved the way in the elevating the status of women, but nature was anxiously waiting for a hero who could equalize the position of man and women with a pragmatic approach and that hero appeared on the Indian scene as Dr. Bhim Rao Ambedkar. Delving deeply into the achievements of Baba Saheb and the present Indian Scenario, Dr. Ambedkar was greatly influenced by the teachings of Lord Buddha, Saint Kabir and Jyotiba Phule. The result was that he wanted, in the light of their teachings, to build up a society, based on the noble principles of equality, liberty and fraternity. These noble principles came in direct conflict with the deep rooted Caste system of Hindu Society, hence, Ambedkar was criticized. It was not to effect ethical relations but to reform the society, to demolish the Caste system

which oppressed, exploited and perpetuated cruelty against Dalits, to remove the evils, the discriminatory notions of high and low, prevalent in the orthodox Hindu society. He always preached for cordial ethical relations based on Justice and equality of status.

Dr. B.R.Ambedkar is remembered as a profound scholar, great social reformer, innovative educationist, able Administrator who championed the cause of the down –trodden and under privileged sections of the society. Born in a untouchable family of Mahow in Madhya Pradesh on 14th April 1891, he suffered himself from all possible indignities, humiliations and ignominies at the hands of the so called Caste Hindus right from the beginning. The society which was based upon Chaturvernya system i.e. Brahmins followed by Kshtriyas, Vaishyas and Shudras created inequality, injustices and deprivation of the basic human rights to the brethrens of the same nation. According to the Chaturvernya system, education was the sole right of the Caste Hindus while social degradation, economic exploitation and all sorts of miseries were the fate of the depressed section of the society. Thus the iniquitous Caste ridden society deprived the low Caste Hindus who were considered as untouchables, and their children the basic right to education, worship and the use of public tanks and wells. They were virtually reduced to slavery and were given the most menial jobs to perform. It was thought that even the shadow of the low class people would be enough to defile the Caste Hindus. Thus narrating the school days of Ambedkar, Dhananjay keer wrote as follows:

> *"Bhim and his brother were made to squall in the corner of the class on a piece of gunny cloth which they carried to school. The teachers would not touch their note books,*

nor did some of them even ask them to recite poems or put questions to them for fear of being polluted. When these boys felt thirsty in the school they turned their mouths upward and then somebody would pour drinking water into their mouths as if through a funnel This was attitude of the Caste Hindus towards the depressed and exploited lots.[2]''

Dr B.R. Ambedkar took the banner of revolt against the society created by the Caste Hindus. Criticizing vehemently the Caste Hindus, he held them squarely responsible together with the Britishers for their cunning policies which had resulted in the gross inequalities between man and man which finally led to the social, economic and political backwardness of the depressed sections of the shaped by his bitter and degrading personal experiences pointed out that the Caste being the illegitimate son of the Verna system had become an instrumentality of exploitation of depressed classes and the other hand, a symbol of power and privilege of the upper classes which was great challenge to the political system and the danger to the unity of India.[3]

The term 'Social Justice' is quite comprehensive. Before 'Social justice', It becomes essential to clarify the term 'justice' According to Dias, 'Justice is not something which can be captured in formula once or for all, it is process, complex and shifting balance between many factors."[4] The tasks of justice are, "the just allocation of advantages and advanteges, preventing the abuse of power, preventing the abuse of liberty the just decision of disputes and adopting to change.[5] Justice may be natural or distributive in nature. Social justice is basically a term which provides sustenance to the rule of law'. It has wider connotation in the sense that it includes economic justice also It aims in removing all kinds of inequalities and affording equal opportunities to all citizens in

social as well as economic affairs. Thus the aim of social Justice is to remove all kinds of equalities bade upon caste race, sex, power position, wealth and brings about equal distribution of the social, political and material resources of the community. Hence, it simply defined social justice is a balance between social rights and social controls.[6]

Swami Vivekananda strongly condemned the social evil of segregation as non- Hindu attitude. He said, "It is not in the holy books" and "don't touchism is a mental disease".[7] Mahadev Govind Ranade regarded social advancement as the necessary prelude to political emancipation Under the moral law, all men and women are equal and it is the supreme duty of man to love man and God with devout sincerity and relevant faith.[8]

Mahatma Gandhi fought against the social evils of racism, imperialism, communalism and segregation (so-called untouchbility). He was very much against Social injustices, tyrannies and oppressions. According to Mahatma,' segregation was not a vital art of Hinduism, but was only an excrescence and plague.[9] The list of reformers goes on and on. It is impossible to describe all reformers of even modern age in this essay because of time and space limitations.

All socio-political changes in any society result from the thoughts of eminent thinkers. These thoughts influence not only a particular society or country to which a thinker belongs to, but any other parts of the world also. Such has been the case with the ideas and means suggested for attaining the social equality conceived by western thinkers, as well as their Indian counterparts. With movement of time the motion of equality which was confined merely to social and political thinking

became a matter of legal consideration. As such awakening in the 19th and 20th centuries are affected by consideration of equality which has been incorporated in the Indian Constitution as well. Thus equality has a history of its own in becoming a legal doctrine.

One of the principle characteristics of the Caste society is the hierarchy of groups. There is a definite scheme of social precedence amongst the Castes with the Brahman at the head of the hierarchy. Only in Southern India artisan Castes dispute the supremacy of the Brahmans." In any one of the linguistic division of India."[10] Ghurye point out that "there are as may as two hundred Castes which can be grouped in classes whose gradation is largely acknowledged by all. But order of social precedence amongst the individual Caste of any class, can not be made definite, because, not only is there no ungrudging acceptance of such ranks but also the ideas of the people on this point are very nebulous and uncertain" [11]

Filled with the desire to adapt their society to the requirements of the modern world of Science, democracy and nationalism and determined to let no obstacles in the way, thoughtful Indians set out to reform their traditional religion. While trying to remain true to the foundations of their religion, they remodeled them to suit the new needs of the Indian people. The Brahman tradition of Raja Ram Mohan Ray was carried forward by Devendera Nath Tagore and Keshub Chandra Sen, who also repudiated the doctrine that the Vedic scriptures were infallible. The Brahmo Samaj made an effort to reform Hindu religion by removing albuses, by basing it on the worship of one God and on the teachings of the Vedas and Upnishads, and by incorporating the best aspects of

Modern western thought. Most of all it based itself on human reason which was to be the ultimate criterion for deciding what was worth while and what was useless in the past or present religious principles and practices. For that reason, the Brahmo Samaj denied the need for priestly class for interpreting religious writings. Every individual had the right and the capacity to decide with the help of his own intellect what was right and what was wrong in a religious or principle. Thus the Brahmas were basically opposed to idolatry and superstitious practices and rituals, in fact the entire Brahmical system, they could worship one God without the mediation of the priests. They actively opposed the Caste society. Moreover its influence was confined mostly to urban educated groups. Yet it had a decisive influence on the intellectual, social and cultural life of Bengal and the rest of India in 19th and 20th centuries[12]

Ram Krishna Paramhans (1834-1886) was a saintly person who sought religious salvation in the traditional ways of renunciation, mediation, and devotion (bhakti) in his search for religious truth or the realization of God he lived with mystics of other faiths. He again and again emphasized that there were many roads to God and salvation that service of man of service of God, for man was the embodiment of God. It was his great disciple, Swami Vivekananda (1863-1902) who popularized his religious message and who tried to put it in a form that would suit the needs of contemporary Indian society. Vivekananda stressed social action, knowledge unaccompanied by action in the actual world in which we lived was useless, he said. At the same, he was convinced of the superior approach of the Indian philosophical tradition. He himself subscribed to Vedanta which he declared to be a fully

rational system. Vivekananda condemned the Caste society and the current Hindu emphasis on rituals, ceremonies, and superstitions, and urged the people to imbibe the sprit of liberty, equality, and free thinking, nor Puranics, nor Tantricts. We are just "don't touchists" Our religion is in the kitchen. Our God is in the looking pot, and out religion is "Don't touch me, I am holy" If this goes on for another century, every one of us will be in a lunatic asylum."[13]

"Liberty in thought and action is the only condition of life, growth and well being, where it does not exist, the man , the race, and the nation must go down" [14]

The Arya Samaj under took the task of reforming Hindu religion in North India. It was found in 1875 by Swami Dayanand Saraswati, Swami Dayanand believed that selfish and ignorant priests had perverted Hindu religion with the aid of Puranas which he said were full of false teachings. For his own inspiration, Swami Dayanand went to the Vedas which he regarded as infallible, being the inspired word of God, and as the fount of all knowledge. He rejected all later religious thought if it conflicted with the Vedas. This total dependent on the Vedas and their infallibility gave his teachings an orthodox colouring, for infallibility meant that human reason was not to be the final deciding factor. However, his approach had a rationalist aspect, because the Vedas, though revealed, were to be interpreted by himself and others, who were human beings. Thus individual reason was the decisive factor. He believed that every person had the right of direct access to God. Moreover, instead of supporting Hindu orthodoxy, he attacked it and led a revolt against it. The teaching he derived from his own interpretation

of the Vedas were surprisingly similar to the religious and social reforms that other Indian reformer were advocating.[15] He was opposed to idolatry, ritual and priest-hood and particularly to the prevalent Caste practices and popular Hinduism as preached by Brahman . He also directed attention towards the problem of men as they lived in this real world and away from the traditional belief in the other world.

The Arya Samajists were vigorous advocates of social reform and worked actively to fought untouchbility and the rigidities of the hereditary Caste society. They were thus advocates of social equality and promoted social solidarity and consolidation. They also inculcated a sprit of self- respect and self- reliance among the people.

As well known, after the election of 1937 the political situation changed rapidly in India. After a series of talks and conferences, proposals were put forward by Cripps, the Shimla Conference and the Cabinet Mission Plan in order to draft the future unitary Constitution and provincial Constitution. But none of these proposals were accepted by the Indian National Congress and Muslim League. Dr, Ambedkar, too, was disillusioned by the colonial rulers after the Shimla Conference. In 1946, another election was held and congress was asked to form the interim Government. The formation of a Constituent Assembly now became a certainly. Although the Congress party had consistently maintained that the Constitution of free India would be framed by a CA elected through universal suffrage, it yielded and accepted a CA based on limited franchise provided under the government of India Act of 1935.[16] Dr. Ambedkar was initially elected to the CA on a ticket of the Scheduled Caste Federation from Bengal but he lost his seat

subsequently due to partition. He was then re-elected by the Bombay Provincial Congress at the behest of the Congress high command in place of Dr M.R Jayakar who had resigned earlier.[17] In its first meeting held on 30August , 1947, the Drafting Committee elected Dr, Ambedkar as its chairman upon his elevation to his position, some dissatisfied member of the Congress questioned Sardar Patel about the wisdom of choosing Dr,Ambedkar (who had been a bitter critic of Gandhi an opponent of the Congress Party) as the chairman of the drafting committee? Sardar Patel's reply was characteristic. "What do you know of Constitution making? We have chosen the best man for the job" [18]

A few months later, Dr. Ambedkar was included into the first Nehru Cabinet of free India, ostensibly on the basis of a recommendation from Gandhi himself .Earlier in April, 1948, Dr, Ambedkar had written a letter to Jawaher LaL Nehru explaining that he had joined the government because he did not believe in opposition for the sake of opposition. Because the offer was unconditional , he left that he could serve the interests of Scheduled Castes better from within government than from out side.[19] With the high trust reposed in him by Nehru and the CA and perhaps because of the recognition and acclamation accorded to him, Dr. Ambedkar's attitude seem to have undergone a change . While speaking at the general public meeting in Bombay, organized by the all India Schedule Caste Federation, Dr. Ambedkar urged the Dalits to co-operate with the congress and think of their country first before considering their sectarian interest.[20]

A review of the progress of Constitution- making by the Assembly indicates that the CA held its deliberation from 9 December, 1946 to

November 1949. CA had eight major committees namely- Rules, Steering, Advisory, Drafting, Union Subjects, Union Constitution, Provincial Constitution and states. Dr. Ambedkar served as a member on the Advisory Committee, Union Constitution Committee, and as Chairman of the Drafting Committee. The objective resolution adopted by the CA in January 1947 declared that India was to be a 'Sovereign' Independent Republic' this was subsequently modified on the suggestion of the Drafting Committee head by Dr. Ambedker, and in its place the Phrase 'Sovereign Democratic Republic 'was adopted. Furthermore, the Drafting Committee added a clause about fraternity in the Preamble of the Constitution and the tern was substituted in place of Federation.[21] There fore incorporation of the changed objective in the preamble of the Constitution on the behest of the Drafting Committee by the CA clearly indicates the concern of Dr. Ambedkar to secure for all citizens justice, liberty and equality in the existing Constitution. These principles so clearly emphasized in the constitution by Dr. Ambedker were greatly responsible for cementing a fragmented India into a powerful nation.

As for the structure of the Government to be adopted, there were three options before the CA the Gandhian Model[22] the Presidential, or the Parliamentary form of Government. On this issue, the CA was divided house and heated debates ensued. Members favoring the Presidential form of Government were miscroscopic minority and their viewpoint was not carried. The Gandhian Scheme of decentralization or Panchayat Raj was not accepted by the Congress Expert committee. Critics of Dr. Ambedkar attributed the CA"s failure to adopt the Gandhian Model to Dr. Ambedker's non-participation in the national movement. It is true

that the opposed the introduction of Panchayat Raj on the ground that the rural Society was conservative and dominated by the traditionally privileged. He felt that village democracy could not be exceedingly conservative and illiberal. Dr. Ambedker feared that the traditionally dominant class would use the political institution of Panchayati Raj to perpetuate and strengthen its privileged position. He was a lifelong fighter for the depressed classes. Their uplift was his only dream, and he naturally judged each and every political action from this viewpoint, i. e. to what extent it would benefit or harm the interest of his community. His opposition to Panchayats was rooted largely in his belief that a National Panchayat system would ensure continued oppression of the Harijans. His argument was that Decentralization might also produce violence in the Gandhian sense by enabling local majorities or dominant Castes to oppress other groups with the power gained through decentralization. He believed that the Panchayat Government would surely entrench Caste at village level by keeping power in the hands of the traditional upper Castes or some other economically ascendant majority. Besides Panchayats, if India had a Gandhian Constitution would perforce become involved in party politics. Rival political parties would, he felt, be used by factions for their local ends.[23]

Dr. Ambedkar believed that without poor coming to the hands of the socially suppressed section of Indian society, it would not be possible to completely wipe out the enormous social, legal, and cultural disabilities from such this section suffered.[24] He afraid that might mean total capture of power and position by the Upper Caste Hindus. This would aggravate the suffering of the untouchables. Untouchables would get no privileges but instead suffer due to the perpetuation of virtual slavery. [25]

It was therefore, natural for Dr. Ambedkar to look upon the Central Government as powerful restraint upon the local majority, and as a savior of the minorities from the tyranny of the majority. He supported the idea of a strong centre to cope with eventualities – Social, political and economic. Thus, to apportion the blame entirely on Dr. Ambedkar for not favouring the Gandhian model and for opposing the Presidential form of Government is baseless and unfounded. The majority of the members in the CA too where in favour of the Parliamentary form of Government. Even the Savayamsevak Sangh and Hindu Mahasabha supported the Parliamentary form of Government and the Constitution proposed by the Hindu Mahasabha was Parliamentary in form.[26]

The Constitution of India was not a Foreign Constitution imposed on India, but a Constitution which had the historical legacy of the National movement behind it. It was not made overnight or within a year. It took years for the Constitution makers to discuss threadbare each and every issue keeping in view the socio-economic and political conditions of the country.[27] It also assimilated the experience of the National Leaders who strived hard for achieving the goal of independence through a bloodless revolution . Granville Austin has rightly pointed out that " Events of the past 14 years (1950- 64) indicate that the Constitution has helped towards the achievements of these aims. What is important, therefore, is not the Foreign origin of means, but that, properly adopted, they have sub- served the national goals.[28]

The Second important issue, which the CA had to deal with, was the adoption of either a unitary or Federal system of government. The Union Power Committee had recommended a federation with a strong

centre. While defining Federalism Dr. Ambedkar reiterated that it was neither a league of States nor were the states simply administrative units or agencies of the Union government. His concept of federalism meant that the state was a federation in the normal times but unitary in an emergency of war.[29] He defended a strong centre so as to avoid rigidity and legalism- the two weaknesses of a federation, Dr. Ambedkar explained that there was provision for appropriate amendments in the Constitution.[30] It is true that in the beginning the CA envisaged a federation which would have restricted role. But the situation soon took a deferent turn with the partition of the country, the expeditious integration of the princely states, and Pakistan's attack on Jammu and Kashmir. A re-examination of the relation of the federation system in the context of the Indian Constitution was called for. This led to a shift from federal policy based on minimum central Authority and maximum autonomy for the constituent units to one with a paramount centre' Moreover, it was realized by framers of the Constitution that only a strong centre could survive the communal frenzy, accomplish the administrative tasks created by the partition (re settlement of refugees for example) and the transfer of the power. Dr. Ambedkar, therefore, envisaged that the centre should be made strong and the provinces given authority only in specified areas . These specified areas were detailed in lists that were prepared while distributing the powers between the centre and the states.

The most important contribution of Dr. Ambedkar was with regard to fundamental rights and the directive principle of state policy. In order to uplift the untouchables from their deplorable plight, he did his best to safeguard their right in the Constitution. The demand for fundamental

rights began with the Constitution of India Bill 1895. It was further reiterated in Mrs. Annie Besant's commom wealth of India Bill of 1925 and the Supru Report of 1945.[31]

Dr. Ambedkar's keen interest in securing fundamental Rights is shown by the fact that even during the first Round Table Conference he had submitted a memorandum in which he demanded equality along with social and economic rights to all citizens.[32], He again pursued this cause in the Advisory Committee on Fundamental Rights and minorities.[33] His compaign for fundamental rights and Removal of Untouchability finally succeeded when these were included in the existing Constitution. Of all the rights, he considered equality of opportunity for all citizens as a particularly important one. Article 10 of the Draft Constitution (Article 16 of the present Constitution) states the " there shall be equality of opportunity for all citizens in matters relating to any office under the state [34]. However, Clause(4) of the Article 16 provide that nothing in this Article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class which in the opinion of the state is "inadequately represented in services or the state.[35] The adoption of these two Articles is attributed to Dr. Ambedkar who had been demanding their introduction since the 1930s In the C.A., he stressed upon the abolition of Untouchability and finally succeeded in this objective through Article 17 of the Constitution. Included in the Constitution was also the right against exploitation of man by man. He , therefore, emancipated not only Untouchables from the fetters of slavery, but also women from the scourage of evil systems such as that of the Devasis, helpless people from forced labour under Article 23 and children below 14 years from employment under Article

24 of the Constitution,

In order to strengthen these Articles, he laid special emphasis on the inclusion of an Article on Constitutional remedies. This he characterized as the very soul of the Constitution and the very heart of it .Article 15A corresponding to Article 22 of the present Constitution, was not present in the Draft Constitution. It came into being because of the initiative taken by Dr. Ambedkar on 15 September 1949, for introducing a new Article 15A. This Article guaranteed the right to every person, who was arrested, to be informed of the cause of his arrest and his right to consult and to be defended by a lawyer of his choice. The Article also provided that every person arrested and detained in custody would be produced before a Magistrate with in a period of twenty-four hours.[36] These provisions ensured equality in respect of Legal treatment and saved the poor and ordinary people from unnecessary harassment. The new Article, Dr, Ambedkar believed "Certainly saves a great deal of time which had been lost by the non- introduction of the words 'due process of Law' "Those who are fighting for the protection of individual freedom ought to congratulate themselves that, it has been possible to introduce this clause.[37] Some powers of preventive detention had to be kept, Dr. Ambedkar explained, due to the present circumstances in the country.[38]

During the alien rule in Indian the caste system did not undergo any significant change as rulers generally preferred to uphold and support the caste order.[39]

The Britishers as prudent foreigners, wishing to consolidate their power over a strange land and people decided to leave the peculiar institutions

of the country severally alone except where they egregiously violated their cherished ideals of the government.[40] They preferred to follow the policy of non- interference as they came into India as traders and conquerors and not as a social reformers[41] But inadvertently the British rule did effect certain changes in the social fabcric India Such change spurred the sensitivities of certain individuals who individually and collectively through various organizations sought to attar the privileges handicaps structure inherent in the caste stratification.[42]

Prominent among the individuals who assiduously worked to better the social status of the backward sections of the society including the untouchables and the Shudras were Phooley, Gandhiji and Dr Ambedkar.While the Arya Samaj sought to reform the Caste structure in consonance with the purified Hindu theory. The Brahmo Samaj and the Prathana Samaj tried to throw Caste over board. The Dravida Kazagam in the for South, under the leadership of Periyar Ramasami Naicker, took up the secular approach. Chatrapati Sahu Maharaj of Kolhapur is remembered for his significant contribution made in supporting the non-Brahmana movement and in getting the principle of communal representation accepted by the British rulers. The princely state Maysore, ruled by a Maharaja hailing from a– backward Caste, realizing the huge disparities existing in government services between personnel belonging to the Brahman community and those belonging to the remaining community, appointed Miller's committee in 1880 to consider steps necessary for the adequate representation of all communities in the public services . The Committee *inter-alia*, recommended various measures to proper representation of the

backward communities in the services .Most of the recommended measures were implemented in the Mysore State.

Jyothirao Phooley of Poona, a man of the Gardener Caste, was one of the initiators of non- Brahman movement of Peninsular India. He founded "Satya Shodhak Samaj" in 1873 with the object of asserting the worth of a human being irrespective of his birth in a particular Caste. He urged the non-Brahmans not to engage the Brahman priest to conduct their rituals.[43] Realizing the need for education of the non-Brahmans, he started a school for the untouchables in Poona- the bastion of Brahmanic orthodoxy. He demanded adequate representation for members of all Castes in the Maharaja of Kolhapur. Thanks mainly to his efforts, special representation through mixed electorate was conceded to the non- Brahmans in the Montague- Chelmsford Reforms. This principle was also made use of in appointments to government posts.[44]

Gandhiji returned to India from South Africa in 1916 and assumed political leadership. From his very childhood, he had believed that untoucability could not be sanctioned by Hinduism. He described Untouchability as a sinful exercise upon Hinduism.[45] Galanter says that Gandhiji dramatized his identification with Harijans (a term coined by him) and particularly with Bhangis (Sweepers), the lowest and the most polluting of Castes calling himself a harijan and Bhangi, he expressed the wish to be reborn as an untouchables.[46] It may be interesting to recall that the Buddha and had chosen Kshatriya families for his birth.[47] Though Gandhiji , who personified the evangelical approach, advocated at the initial stages a purified Varnasharama dharma in which

untouchables were to be restored to their rightful place as Shudras, in his late phases his thinking underwent a radical change about untouchability. "He was now willing to legal compulsion to permit Harijans to assert their rights, and envisioned a future Constitution in which all form of untouchability would be abolished by law. He no longer defended *Varna* while denouncing Caste. Untouchability could be eradicated only if the Hindu society became Casteless.[48] Though various measures, Gandhiji thought that finally there would be only one Caste, known by the beautiful name Bhangi, that is to say the reformer or remover of all dirt.[49] At the instance of Gandhiji the congress party adopted removal of untouchability and upliftment of the Harijans as major programmes of reform. Inter-caste marriages and temple entry programmes involving the Harijans became regular features of the congress activity.

The removal of untouchability and all disabilities from which the depressed classes suffered from an important item in the programmes of all socio- religious movements socio- religion movements that sprang up in India during the British rule. Indignation at such an inhuman and unjust institution was a part of the general democratic indignation which developed among the conscious and educated section of the Indian people Eminent personalities, social and non-political institutions strove by means of propaganda, education and practical measures to restore equal, social, religious and cultural rights to the untouchables. Social reformers, however, were not satisfied with the existing state 'of affairs, and legislature tried to introduce bills legalizing inter caste marriages. The special marriage Act of 1872 made it possible for an Indian of whatever caste or creed to enter into a valid marriage with a

person belonging to any caste or creed, provided the parties registered the contract of marriage, declaring *inter-alia* that they did not belong to any religion. The clause requiring the solemn renunciation of Caste and religion by the parties to a civil marriage was considered a great hardship and moral dilemma by all progressive elements in the country. To add to this grievance, members of the Brahmo Samaj, who were regarded as outside the purview of this Act, were held, by a decision of the Privy Council to be Hindus for the purposes of the Act,. Marriages of Brahmo Samajists could no longer be valid unless the parties signed a declaration that they did not belonging to any Caste or religion. Continued agitation was carried on by reformers to liberalize the marriage law owing partially to the apathy to the government and the hostility of the conservative section of the Hindu, both B,N. Basu and Vithalbhai Patel, one after the other, failed in their efforts in this direction. It was only in the reformed legislature that Sir Hari Singh Gaur succeeded in getting a pertinent bill passed into law, though not in the original form intended by the first reforms. It is known as the special marriage Amendment Act, of 1923. It applies only to Hindu including Jains, Sikhs and Brahmans. Person marrying under the provisions of this Act, to whatever Caste they may belong, need not make the declaration as prescribed in the Act, of 1872. This advantage, however, is gained not without a substantial sacrifice. If two Hindu belonging to different Caste marry under this Act, they are not required to renounce their religion in declaration but have to forfeit certain of their personal rights as Hindus. They can not adopt on their marriage they cease to be the members of the joint family to which they previously belonged. Whatever rights in the property to the family have accrued to them by

survivorship under the Hindu law cease. As regards their own property they will be government by the Indian succession Act and not by the Hindu law.[50] Under the old regime of caste certain sections of Hindu society which were regarded as untouchable were devoid of many of the civil rights. The question of removing their disabilities and placing them on a footing of civil equality came up for consideration before the British administrations. In 1856 the government of Bombay had to consider the case of a Mahar boy, who was refused admission to the government school at Dharwar. The principle involved in the case occupied the attention of the government for about two years.

Finally in 1858 it was announced in a press-note that although the governer– in council does not complete the introduction of law Caste pupils into schools, the express of which are shared with government by local contribution and patrons who object to such a measure, he reserves to himself the full right of refusing the support of government to any partially aided school in which the benefits of persons on account of caste or race, and further resolved that all schools maintained at the sale cost of government shall be open to all classes of its subjects without distinction".[51]

In a press note of 1915 we still find the complaint that contract with Western civilization and English education had not successfully combated the old ideas about untouchability. It further refers to the familiar sight of Mahar and other depressed class boys in village schools were the boys are often not allowed to enter schoolroom but are accommodated outside the room of the verandah In 1923 the government issued a resolution that no grants would be paid to any

aided educational institution which refused admission to the children of the depressed classes. By this time the practice of segregating the depressed class boys was fast disappearing especially in the control division of the presidency .In many local Board and municipal schools depressed classes like boys and girls of the caste Hindus. While the Bombay government was thus enforcing the right of the depressed classes to equal treatment, the Madras government had on its state- book so late as the end of 1923 a law empowering village magistrates to punish the offender of the lower castes by imprisonment in the stocks though the government had definitely pledged itself in 1914 to discontinue this in human practice.[52] In 1925 a bill was introduced in the Madras legislative council to put under statute the principle of a resolution passed in the previous session of the council throwing open all public roads. Streets, are pathways giving access to any public office, well tank or place of public resort, to all classes of people including the depressed. In the reformed constitution the depressed classes got special representation in local and legislative bodies by nomination.

The majority of the Castes which were under various disabilities, excluding the depressed classes, were non- Brahma. The uniform laws of the British did not recognize any of these disabilities lawful. Yet, the services were mainly named by Brahma and allied castes, who were the first to report by English education Their traditional attitude towards caste nationally influenced their dealings with the non-Brahmana classes. This situation gradually awakened some of the non- Brahmana leaders and sympathic officers of the government to demand special treatment to those half – submerged classes. As a response, Chatifield, the director of public instruction in Bombay, allowed in 1878 some

concessions in matter of fees in primary schools to the boys of some these castes .Later on were instituted scholarships in secondary schools and colleges for boys from some of them. The early non-Brahman leaders had urged upon the government the necessity of special representation of their members both in the administrative bodies as well as in the services. For a pretty long time this appeal remained unheeded. The cry was, however, taken up by the late Maharaja of Kolhapur,[53] and a strong case for it was made by him at the time when montaque came to India to consult the people and the government of India as regards the future form of government.. In the reformed constitution framed by Montasque and Lord Chelsford special representation through mixed electorates was conceded to the non-Brahmans .Under these provisions the whole Hindu populace in the Bombay Presidency is divided into three sections. Brahmans and allied castes the intermediate classes formed by Marathas and other, and the backward classes including the so called untouchables.[54] The classification, with the addition of Indians like the Paris in the appropriate section, is also followed in recruiting the various services. A resolution of the government of Bombay Finance Department dated 17th September, 1923, expressly prohibited recruitment to the lower services from the advanced class of Brahmans and other till a certain proportion of the posts is held by members of the intermediate and backward classes.[55] It is because of their avowed intention of the government to see certain castes represented in the services of the Province that heads of government institutions while inviting applications for vacancies under their charge require the applicant to state his caste and sub-castes.[56] The attempts of untouchables to enter

the armed services were going on as late as 1915, but they unsuccessful. The order banning the untouchables in the army was withdrawn on February 1917 and a Mahar Batalion was disbanded, there was a strong protest. The necessity of recruiting Mahars in the army was also emphasized. On 11 November 1917, a conference of the depressed classes was convened under the chairmanship of Sir Narayan Chandavarker The conference placed the demands of the untouchables before government. In 1917 a resolution was passed to the effect in the Calcutta session of the congress for abolition of untouchability was convened under the chairmanship of Maharaja Sayajirao Galenwood of Baroda Sir N G Chandavarkar was the chairman of reception Committee A Royal Commission to inquire into the grievances of the untouchable was demanded. Social workers before 1920 were under the influence of humanitarian ideas. Christianity had also its effect on the Bombay legislative council, moved a resolution in the council on 25 July 1921 for free and compulsory education to the untouchables. But this demand another MLC of Bombay, C. K. Bole demanded that public places should be free for untouchables might resort to Satyagraha Vithalramji Shinde and Shivram Janba Kamble did pioneering work in promoting the movement for the abolition of untouchability.

With the growth of city life and its migratory population has given rise to hotels and restaurants. The exigencies of office work have forced city people to put a side their old ideas of purity. Caste Hindus have to eat articles of food prepared by Christians, Musalman or Persians, because Hindu restaurants have not been easily or equally accessible during office hours. In Hindu hotel they have to take their meals in the company of people of almost any caste- as the hotel keeper can not

manage to reserve accommodation for members of different castes. What was originally done under pressure of necessity has become a matter of routine with many in their city life. This freedom from caste-restrictions about food, though seen in the city is a mere garb that is usually caste aside by city people when they go to their villages. The force of custom and sentiment is so great that it has led the people to create a duel standard of life rather than break with their village folk especially this is true of all formed occasions. While this slow and enforced change was taking place at special dinners where persons sit in a row irrespective of caste have, from time to time been successfully arranged by some associations. Conscious effort and the force of flex have effected an altogether healthy and appreciate modification in the people's attitude in the matter of supposed pollution imported through food and drink by certain classes of people. Where as in Poona a handful of people like M. G. Ranade and others were subjected to social tyranny and ultimately forced to undergo expiry rites in 1891-92 for having taken tea a Christian Missionary's place today no one even takes notice of the Brahmans dining at the government house[57] In those parts of India, where the untouchables were really unapproachable certain exigencies of modern life have forced high- caste Hindus to change their attitudes and practice to some extent. "In towns, where private scavenging and sweeping are enforced, the scavengers have not only to go near the house but have sometimes to enter into them for scavenging. This has done away with distance pollution.[58] there is much more freedom in the matter of choice of occupation today than the old regime. First, new occupations, which require abilities similar to those displayed in older occupation, have arisen out of the new requirements. Many of

these occupation like those of draftsmanship and cabinet- making, have came to be booked upon with greater esteem and are better remunerated than their photo- types draftsmanship is partially allied to clerkship (in so for as it involves desk work in an office) and largely to the ancient designer' therefore, had both from the higher castes of Brahmans and other as well as from the lower castes, such as higher artisans. Such occupations as tailoring and shoe making them easy and less tedious, and largely because the new technique and craftsmanship is associated with the new rulers. They are, therefore, taken up by more and more members of very high castes. Secondly dislocation of the old economic order and provision of facilitates for training in arts and craft have led to an extensive shifting of the old lines of division between occupations. The total results is that at present many members of the Brahman caste of seen engaged in almost any of the occupations, excepting those of casual labourer, of the various artisan castes are teachers, shopkeepers, bank clerks, shop assistant and architects. In the textile mills of Bombay not a few members of even the untouchables caste have found wert' quite different from what they were used to under the regime of caste. Whatever restrictions caste imposed on the choice of occupation have largely ceased to guide individuals, and it is ignorance and luck of enterprise that have kept the occupational unfreedom of caste, even to the extent that it is observed and not the old ideas of what was considered to be one's traditional or hereditary occupation.[59] Prof. M.N Srinivas, the noted sociologist, has explained this social change and particularly the changes in the caste system with the help of two sociological concepts they are; (i) Sanskritization, and Westernization.

According to Dr. Sri Niwas[60] Sanskritization is the process by which a low Hindu caste or tribal or other group changes its costumes, rituals, ideology and way of life in the direction of a high, and frequently, "twice born caste". Generally such changes are allowed by a claim to a higher position in the caste hierarchy than that traditionally conceded to the claimant caste by the local community. The claim is usually made over a period of time, infact a generation or two, before the arrival in conceded. However, the mobility associated with Sanskritization results only in the positional changes in the system and does not lead to any structural change. That is, caste moves up, above its neighbours and another comes down but all this takes place in an essentially stable hierarchical order. The system it self does not change. The term Westernisation is used by Prof. Srinivas to characterize the changes brought about in Indian society and culture as a result of 150 years of British rule, and the term subsumes changes occurring at different level-technology, institutions ideology, values, etc.

Prof. Sri Nivas opines that there is no doubt the Verna model has been regarded by urban and educated Indians as providing for a more popular during the British period as a result of variety of forces, the institution, which prevailed till 1864 of attaching Brahman Pandits of British established law courts, the presence in every town of a body or Western- educate lawyers who tried to apply the Brahman law to all Hindus, the translation of a vast mass of sacred literature from Sanskrit to English, the rise every where the caste subhas, which tried to introduce reforms by Sanskritizing the way of life of their respective caste and the growth of vigorous anti Brahman movement, which attempted to displace Brahmans from the positions of power and

influence which they occupied in same parts of the country.[61] The caste system is a complicated one, both theoretically and practically. Practically it is an institution that portends tremendous consequences for all concerned. It is a national problem capable of wide social tension, for as for as caste in India does exist, the Hindus will hardly inter– many or have any social intercourse with outsiders, and if caste minded Hindus migrate to other regions on the earth, the Indian[61], Caste would became a word problem (i) M. Senart, a French Authority, defines a caste as a close corporation, in theory, any rate, rigorously hereditary; equipped with a certain traditional and independent organization, including a chief and a Council, meeting on occasions an assemblies of more or less plenary authority and joining together at certain festivals bound to together by common occupations, which relate more particularly to marriage and to food and to questions of ceremonial pollution, Such a corporation, according to him, is restricted to the exercises, of Jurisdiction to its members, the extent of which varies, but which succeeds in making the authority of the community more felt by the sanction of certain penalties and above all, by final irrevocable expulsion from the group.

According to Sir H. Risely, "a caste may be defined as a collection of families or groups of families bearing a common name, which usually denotes or is associated with specific occupations, claming common descent from a mythical ancestor human or divine, professing to follow the seems professional callings and are regarded by those who are competent to give an opinion as forming a single homogeneous community".

Mr. Nesfeld defines "a caste as a class of the community, which disowns any connection with any other class and neither, inter- marry, nor eat, nor drink with any but persons of its own community"

According to him, the absence of interdining is the cause of caste. Dr. Kalker, an Indian authority- defines caste as 'a social group having two characteristics (i) the membership is confined to those are born of members and includes all persons so born, and (ii) the members are forbidden by an inexorable social law to marry out side the group.[62] Dr. Ambedkar says that those scholars, if taken individually, may be said to include in their definitions of caste too little. Neither definition can be said to be complete or correct. They have almost missed the central point in the mechanism of the caste system. They have been mistaken in defining the nature of caste as an isolated unit by itself, and not as a group with in the system, and with definite relations to the caste system as a whole. Yet, collectively, all of their views are complementary to one another each one emphasizing what has been absurd in the other. Dr. Ambedkar endeavours to examine by way of criticism only those points, common to alien each of the above definitions, which are regarded as peculiarities of caste[63]. To start with Senate, he associates caste, with the idea of pollution has little to do with the origin of caste, for this idea is related to only the priestly class, which along has a particular notion of purity and impurity: It is a factor, but not the essence of caste.[64] Nesfield has mistaken the idea of missing and thinking that its absence is the cause of caste. This another has put the cart before the house. The effect of the cause, Dr. Ambedkar hold that the absence of a general messing system is a natural result of the caste mechanism, that is, exclusiveness, but not the cause of it. Sir H. Risely,

according to him, makes no new point. His definition deserves no special attention.[65] Though Dr. Kelkar seems to exhibit the real spirit of caste mechanism, viz the members are forbidden by an inexorable law to marry outside the group, yet as Dr Ambedker observes, he has not made his point clear by means of Illustration. In his definition, there is a slight confusion of thought, lucid and definite as otherwise it is He speaks of prohibition of enter- marriage and of membership by the rule of endogamy as the two characteristic of caste. Dr, Ambedkar says that these two aspects are one and the same thing and not two different things as Dr. Kelkar supposes them to be it 'enter marriage is prohibited', naturally the result would be to limit membership to those born within the group. The two aspects are the observe and reserve of the same.

As for Dr. Ambedkar, endogamy or the absence of enter marriage, is the only trait that can be called the essence of the caste system. He observes that no civilized society of the world in modern times inherits more survival of a primitive nature than Indian society for it operates, in all its aspects, as a rigorous tribal code. Other societies do not have hard and fast rules regarding the marriage system, But in Hindu society, today, the role of exogamy, for all practical purposes, seems to be a positive injunction. In fact the rule of endogamy, according to Dr. Ambedkar, is largely responsible for the caste mechanism.[66] It is Since Manu, according to Dr. Ambedkar, that the marriage rules became more rigorous. Manu codified these rules, and gave them a religious sanction, viz, to marry outside one's group, class or Verna , was a sin against the divine will, for which, one would have to undergo many tortures, physically and mentally. The Penalties were prescribed for those, who

broke the rules of the code. This was in order to maintain the rule of the code. This was in order to maintain the rule of endogamy or rather to preserve trial culture and civilization, and thus, to adhere to group loyalty.[67] Dr. Ambedkar, further, observes that it is very difficult to check the exogamous tendencies of the people. But the Hindu social laws had no marry for a sinner who had the courage to violate the sanctity of the Shastra's The Penalty impressed upon the individual was excommunication from the main class. The excommunicated people, then , were liable to form a separate enclosed group with in the main class , in fact this happened. No such enclosed group was allowed to have intercourse with the former class with the result that these people permanently, formed their own groups. In short the greater frequency of breaking the rule of endogamy, the larger the creation of new enclosed groups.[68] With the lapse of time, there was a further fragmentation of the enclosed groups, this led to the formation of wheels with in wheels in Hindu society. Thus caste, to Dr. Ambedkar, is an artificial chopping off of the population in to fixed and definite units, each one prevented from fusing into another group the custom of endogamy.[69] Dr. Ambedkar was Manu of the Indian constitution. It would not be trite to say that he was deadly against Manu, who was founder of hierarchical l system of Hindu society on the basis of caste He was against the society based on caste as it breeds inequality, produces strife and social inequality His views on abolition of castes are still relevant in the present set–up of the society . He was a preacher of social democracy and believed that the political and economic democracy would be of no avail unless social inequalities are removed He had been a staunch fighter of his community and in order to watch the interests of

untouchables, he criticizes the congress and Gandhi and aligned some times in his eventful career with British.[70] Dr. Ambedker was of the view that the caste system prevents common activity and by preventing it , it has prevented the Hindus from becoming a society with in an unified life and consciousness of its own beings.[71] There is only individual share or part in the associated activity. According to his version, Hindu religion ceased to be missionary religion when the caste system grow up among the Hindu. Caste was inconsisted with conversion . He concluded "so longs castes remain, Hindu religion can not be made a missionary religion and "Shudhi" will be both a folly and futility by.[72] According to him, caste is not merely a division of labour, it is also a division of labourer. It is a hierarchy in which the division of labourers is graded one above the other. This division of labour was not natural aptitudes nor on choice. Individual sentiments had no place in it. But the caste system involves an attempt to appoint tasks to individuals in advance selected not on the basis of trained original capacities, but on that of the social status of the parents.[73] He was so pessimistic on caste problem s that he remarked "chaturverna" must fall for the very reason for which Plato's Republic must fail and said. To me this "Chaturvarnaya" with its old levels is utterly repellent and my whole being rebels against it.[74] There was no caste system according to him before pre-Vedic period. He raised another question that why there is no social revolution in India. The obvious answer he gave was that the lower classes of Hindus have been completely disabled for direct action on account of this wretched "Chaturvarnayas" system. He further said that the lower classes were condemned to be lowly and not knowing the way of escape and not having the means of escape they became

recommended to eternal servitude which they accepted as their inescapable fate. The weaknesses in them have had in their freedom of military services- their physical weapon, in suffrage- their political weapon and in education- their moral weapon. All the three weapons were denied to the masses in India by Chaturvarnaya. He concluded there can not be a more degrading system of social organization than Chaturvernaya. It is the system which deadens paralyses and cripples the people from helpful activity.[75] Dr. Ambedkar was the chief Archeitect of the Constitution of India when it was in drafting stage. The Constitution of India aimed ensuring fundamental rights and human dignity to the citizens and non-citizens, the removed disabilities to untouchables The caste was based on secularism and at same time the interest of minorities religious freedom of every section of society irrespective of caste or creed are social disabilities and were protected. Dr. Ambedkar fought against untouchability and later on it was adopted as one of the important items of manifesto of the Indian congress Party and it formed its recognition in Indian Constitution that the untouchability in any form in India is abolished and would be punishable in accordance with law. Dr. Ambedkar fought separate electorate for Scheduled Castes representation but he failed and provision for reservation was made. He was of the view that communal majority would not look the interest of them. Dr. Ambedkar did not want permanent reservation to weaker sections of the society that is Scheduled Castes, but he wanted social mobility of the depressed classes and their absorption in the main stream of National life. The tragedy of the time is that the benefits have not gone to the deserving sections of the scheduled castes and it started concentrating in new

families and imbalance was not removed and the dream of the architect of the Indian Constitution remained unfulfilled.[76] The father of the Indian Constitution issued directions in the directive Principles to the political parties to distribute of justice to the deserving people and socio- economic efforts were made, benefits have been percolated no doubt to the weaker sections of the society not to the weaker sections of the society not to the extent to which the father of the Constitution of India thought. Hindu society is rigid, which experienced volcanic, social change when the Hindu code was enacted despite opposition from conservative wings of religion. Dr. Ambedkar suggested enter–marriages and enter dining in the caste and government also encouraged it later on by way of special prizes who marry the Hindu Scheduled Castes or vice- versa. Society did not accept it as caste system had not been diluted. Entry of temples, public places or resorts was made free and accessible to the Scheduled Castes. Educational institutions raised their standard of living . People no more looked with contempt or hatred rather in villages also villages are not hesitating in dining.[77] Economic structure of India is such that parallels economy is operating. Unemployment is rampant. The status of the upper caste on account of getting benefits by few families are same as of elite of other castes Despite reservation the problem stands where it is. Dr. Ambedkar was a Constitutional Prophet. He prophesied that permanent reservation is no solution and Dr. Ambedkar on Social justice "The love of justice is, in most men merely the fear of suffering injustice.[78] La Rochefoucould "Those denounce injustice do so not because . They are afraid of doing but of suffering it."[79] Before discussing the views of the Ambedkar concerning social justice for the depressed, under privileged and

scorned, it may be worth recalling to knowing what social justice means. Social justice is not only different but hard to define, because Ever since men have begun to reflect upon their relations with each other and upon the vicissitudes of the human lot. They have been pre-occupied with the meaning of justice.[80] It is fact the man alone is the true subject and object of justice. The worst and most ignorant of men appeal to justice as the vindication of some of their most misguided actions.[81] Be that as it may, abominable injustices have done in the name of justice, even as terrible oppressions have been done in the name of liberty, because when men sink to the lowest they clutch for excuse at the highest.[82] Justice is a social virtue, and the term adequately conveys the simple idea that the virtue of justice arises out of, and express itself in, obligations towards others.[83] The purpose of justice as a social virtue is to maintain, or to restore, an equilibrium, or harmony in human affairs the conception of harmony is dominant theme in every aspect of justice and every treatment of it, ancient or modern.[84] Justice or as moral principle postulated equality of consideration for all who may come within its scope meaning there by all human creatures.[85] Thus social justice is an art which implies "Just fair and reasonable" guidance to all the dispensers that Justice– according to law in necessary in society to establish some accepted standards of the common good.[86]

Long ago the Supreme Court of India through justice *NH Bhagwati in Muir Mills Co Ltd. Vs Suit Mills Mazdoor Union*[87] describes social justice as a very vague and indeterminate expression. Without embarking upon a discussion as to the exact commutation of expression social justice we may only observe that the concept of social justice

does not emanate from the fanciful notes of any adjudicator but must be founded on a more solid foundation.[88] *In Prakash Cotton Mills v. Bombay.*[89] Chagla C.J. (as he then was) argued that social justice in interpreting statutory provinces, social justice was an objective of the Constitution and it was an inarticulate major promise which was personal and individual to every court and every judge,. Depending on the judge outlook on life and society and laws can not be interpreted without reference to social justice to achievement of which our country was pledged. [90] Justice Hegde (as he then was) of the apex court in his Rao Memorial lectures approvingly quoted Professor C.K Allen.[91]

We hear much today of "Social justice I am not sure that those who use the term must glibly know very clearly who they mean by it. Some mean distribution or "redistribution of wealth', some interpret it as "equality of opportunity" a misleading term, since opportunity can never be equal among human being who have unequal capacities to group it.[92] Many, I suspect, mean simply that it is unjust that any body should be more fortunate than themselves, and the more intelligent mean that it is just. I would rather say benevolent that every effort should be made at least to mitigate the aspects of natural human inequality and that no obstacles should be afford, but rather help afforded, to practicable opportunities of self improvement[93]. Social justice, or distributive justice, or compensatory justice, as a quest for justice. It is a challenge of equality, liberty and justice. It is in pursuit of "making law an instrument of social change and for reminding lawyers and judges that they are social engineers.[94] Law is an instrument of social change must be quid pro quo of its three alphabets. L for liberal, A for affiant / Affiance. W' for workable. Therefore, rendition for social

justice demands to have interaction with social purpose. Social purpose requires the interpretation of the eternal principles of human freedom to meet the challenging conditions of our times and the application of the fundamental principles of justice to the problems which arise in the complex of our era.[95]

Conscientiously, preamble of our Constitution is the culmination of securing social justice through twin brethren; fundamental rights and directive principles of state policy, and those are directed to achieving means as well as ends of social justice.[96] Thus justice devoid of social justice, that is to say , socio-economic political , and is not meaningful purposeful and result oriented social justice does not aim at providing justice to "haves" but equally cases for the "have not" viz, underdogs disadvantaged scorned , and under privileged populace.[97] Social justice therefore, means "justice which is not confined to a fortunate few, but takes with in its sweep large masses of disadvantaged and under privileged segments of society, justice which not only penetrates and destroys the in equalities of race sex, power, position or wealth but is also heavily weighted in favour of the weaker sections of humanity, justice which brings about equitable distribution of the social, mental and political resources of the community justice which the law must ensure the people that rule of law becomes meaningful (and rule of life) and social a reality for them.[98] Social justice opines V. R. Krishna Iyer, in our socialist Republic is socio- economic revolution in the current miasmic milleu.[99]. He further explains the term social justice while relying on Dr. PB Gagendraker, as follows "The vice of social equality assumes a particularly reprehensible form in relation to the backward classes and communities which are treated as untouchable, and so, the

problem of social justice is as urgent and important in India as is the problem of economic justice. I am using the term social justice in a comprehensive sense so as to include both economic justice thus takes with in its sweep the objective of removing all inequalities and affording equal opportunities and to all citizens in social affairs as well as economic activities.[100]

Dr. PB Gajendrakar answers to the question: what is social justice? As under: The welfare plan evolved by the Mevendge Report- the plan of social security – put forward by the said report , democracy took upon itself the task of attacking five giant evils, want, disease, ignorance squatter, and idleness. Basically all these five giant evils thrive on the fundamental evil of poverty. Therefore, under the concept of a welfare state, the primary function of the state, to attack the problem of poverty, assumes considerable significance. Democracy realizes that this problem which concerns an over whilmingly large number of its mighty weapon of law and attempts to restore balance to the economic structure and to remove the causes of economic tension from the body politic of the community. All the attempts made by the democratic legislatures to meet the challenges of poverty constitute attempts to the citizens of the state economic justice. Equality of opportunity to all the citizens to develop their individual personalities in the goal of economic justice. Social justice as distinguished from the economic justice has a special significance in the context of Indian society. As we are all aware, the Hindu social structure is based on castes and communities which create walls and barriers of exclusiveness and proceed on the basis of considerations of superiority and inferiority.[101] Part iv of the Constitution of India entitled as "Directive Principles of State Policy" is

the soul of the instrument of instructions in the nature of social policy with the directions of the state to strive the goals of social justice through the instrumentalities of law, schemes and other mechanisms Granville Austin beautifully explores this soul of our Constitution: In the Directive Principles, however, one finds an even clearer statement of the social revolution. They aim at making the Indian masses free in the positive sense, free from the object physical conditions that had prevented them from fulfilling their best selves. The essence of the directive principles lies in Article 38. The constitution was to foster the achievement of many goals, transcendent among them was that was social revolution. Though this revolution would be fulfilled the basic needs of the common man.[101] It discerns that the concepts of social justice have varied with age and clime. Social justice to the millions" to wipe every eye".[102] Be that as it may, our constitution envisages tripartite picturesque of social justice, viz Justice– social– economic and political in directed in the preamble, socio economic justice procured by the directive Principles and state policy : justice social and political is secured by fundamental Rights.[103]

Therefore, the trinity– The problem, the Directive Principles and the fundamental Rights the quintessence of justice, in the contemplation of the Constitution is the liberation from socio- economic subjection and consists in the actualization of the goal of full and free development of every individual. Thus, in broader perspective "social justice is the end".[104] The public interest law had introduced a safe inroad of PIL which has been described as "Access to justice" is a new designation of social justice. It has given a novel court process as "Epistolary jurisdiction" i.e. giving a golden key in the hands of the "have knots" to

open the accessable doors of the courts to have access to justice so that the type of justice enjoined in the Constitutional justice comes to be realized.[105]

After an in-depth but a succinct as well as critical examination of the concept of social justice, Dr. Ambedkar's profile and the formative influences that shaped his life, thinking process and work, a probing into his social justice ideas and vision may now be imperative. Dr. Ambedkar's social justice vision can be equated with the saying of Alexander Pope (1688- 1744): "That true self-love and social justice are the same,[106] Dr. Ambedkar' himself explained his social philosophy, social philosophy may be said to be enshrined in three words; liberty, equality, and fraternity.[107] Dr. Ambedkar's this reiteration having bearing on his debate in the Constituent Assembly where in he delineated on the nature and conditions of a real democracy. Democracy was nothing but the consumption of the three principles of liberty, equality and fraternity that form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy.[108] To him, real democracy was a social democracy. A close study of Dr. Ambedker's thesis on how to make Parliamentary Democracy successful it is expedient to analyze Dr. Ambedkar's view on the causes of the failure of political democracy and significance of the emotion of social democracy, political democracy devoid of social and economic democracy.[109] Dr. Ambedkar being an admirer of political Parliamentary democracy opined its conception as government discussing and not by fisticufis.[110] He further gave reason for its failure : Parliamentary democracy took no notice of economic inequalities, and did not care to examine the results of freedom of contract on the parties

to the contract inspite of the fact that they were unequal in their bargaining power; If (Parliamentary democracy) did not mind , if the freedom of contract gave the strong opportunity to depressed the weak. The result is that in standing out as the protagonist of liberty has continuously added to the economic wrongs of the poor, the downtrodden and the disinherited.[111] Dr. Ambedkar considered democracy as the another name for equality but Parliamentary democracy develops a passion for liberty, and it has not endeavoured to strike a balance between liberty and equality with the result that liberty has swallowed equality and thus has made the political democracy a force.[112] He there fore, a fortiorari, pleaded the realization of economic and social democracy in India, for political democracy was unreal unless preceded by economic and social democracy.[113]

The cumulative impact of all this is, it may discern that to Dr. Ambedkar social democracy means to enable every person to lead and all round life involving as much the cultivation of the mind depends on Sadhamma the combination of Pradnya, Sita, Karuna and Maitri, Sadhamma means the eradication and amelioration of all social barrio between man and man, the worth and not the birth is the measures of man, it promotes equality, it kind lee man the spirit of fraternity. This is, on the one hand the way of life based on liberty, the way of attaining a government based on social democracy which is the cornerstone as well as a milestone of social justice.[114] The contours of Dr. Ambedker's justice vision are two-fold, first before the independent constitution of Independent India, and second as reflective in the constitution of India. In the first case , Dr. Ambedker 's endeavours were directed to towards the awakening of the depressed classes, their increasing consciousness

of basic human rights and securing the political , social and educational safeguards to the untouchables. The roots of his this philosophy were not in politics, but inherent in religion.[115] W.N. Kuber presents the philosophy of Dr. Ambedker thus "His philosophy was occupied with social amelioration, political enlightenment and spiritual awakening. For this, it attached due importance to the economic well being of the masses. To him, political thought embodied a social dynamism because of man's attitude as a political animal and social being. He had a deep faith in fundamental human rights in the equal rights of man and women, in dignity of the individual, in social and economic justice, in the promotion of social progress and better standards of life with peace and security in all spheres of human life. His study of social facts enriched his political philosophy.[116] Therefore, discern , in the words of Johnson what did he say about gold smith, that "He touched nothing that he did not adorn.[117] In sum and substance, Dr. Ambedkar's workfare imperative towards social transformation or reconstruction, i.e. To uphold the need for human dignity, equality and liberty, rights and civil facilitation for the untouchables and depressed classes and, this may be the gist of his social justice vision in pre- constitution period.

The major works of Dr. Ambedkar, viz, castes in India, Annihilation of castes, Maharastra as Linguistic Province, need for checks an Balances, thoughts and Linguistic states , Ranadey, Gandhi and Jinnah, Evidence before. The South borough Committee, federation Verses freedom communal Deadlock and a way to solve it State and minorities, small holders in India, Mr. Russell and the reconstruction of society.[118] Philosophy of Hinduism, India and the Pre-requisition of communism, Revolution and counter Revolution, Buddha and Kari- Marx, Riddles in

Hinduism an exposition to Enlighten the masses.[119] Untouchables or the children of India's Ghetto, Essays. On untouchables and untouchability, social political, religious.[120] Who were the Shudras, the untouchables,[121] not only vouch for his above delineated social justice vision but amply demonstrate his singular contribution to mould or reform the life and environment of depressed classes to achieving social economic and political equilibrium in the society of unequals. Therefore those works are *sui genenis* in as much as that W.N. Kuber (Ambedkar a critical study), A.M. Rajashekhariah (Ambedkar's quest for social justice, B.K. Ahluwalia and Shashi Ahluwalia (Bhimrao Ramji Ambedkar) V. Chandra Mohan (B.R. Ambedkar and his vision), Bhagwandas Thus spoke Ambedkar, A.M. Rajshekheriah (Dr. B.R Ambedkar- politics of emancipation) B.K. Ahluwalia and Shashi Ahluwalia (B. R. Ambedkar and human Rights), V.R. Krishna Iyer (social justice sun- set or Dawn) have also analylitically examined his these works and a fortiori certify this social justice vision of Dr. Ambedkar.[122]

Being a spokesman of the ignored lot of humanity, his thinking arose out of his acts dissatisfaction with the anomalous treatment meted out to his community by the Hindus of higher castes, his philosophy and action was occupied with social amelioration of caste system because it was inhuman and detrimental to the upward march of the untouchables.[123] Right from Montaque Chelmsford Reforms (1919) to cabinet Mission proposals (1946) he was invited to represent his community.[124] His life mission as well as preaching was directed in raising the depressed classes (socially and educationally)to the states of human beings.[125] He proclaimed three objectives though priority the objects of his life, but these were in achieving social justice for the

depressed to spread education, to give more representation to the untouchables in government services, and to improve the condition of the untouchables in the villages.[126]

Dr. Ambedkar's social vision is reflective in his own words as an economic system it permits exploitation with out obligation. Untouchability is not only a system of unmitigated economic exploitation, but it is also a system of uncontrolled exploitation. That is because there is no independent public opinion to condemn it and there is no impartial machinery of administration to restrain it There is no check from the police or the judiciary for the simple reason that they are all drawn from the Hindus, and take side of the exploitation for the uplift of the depressed classes, he believed that through education alone they could be raised, and through brother hood the upper classes should strive to uplift the downtrodden. His predicament was that the educations as well as the brotherhood are Zeal not according to knowledge and not according to nature we have to raise the depressed classes to the similar level of physical purity not to drag down the clean to the level of the dirty, not until this is done, close association is undesirable. [127]

His plan of social reform is clear in his inimitable words: "If the alien element was removed and economic change were given precedence, an energetic administration could easily introduced for-reaching social reforms,"[128] in as much as that he worked throughout for the upliftment of the under privileged , under developed, scorned so that no more Eklavyas are repeated and many more Chandra Mauryas are made for

the shaping of the unity and integrity of India that is Bharat, Shakespeare long ago had expressed.

There is tide in the affairs of man which, taken at the food leads on the fortune.[129] His theories as penned down in his writings presentations before Round table conference on 12 November, 1930, Evidence before the reforms committee (Franchise Southborough Committee on 27 January 1919), Culmination of Poona Pact 1932 etc. about the untouchables and Shudras were contentious, debatable and controversial, but convincingly are the revelations of his struggle for social equality for the untouchables and Shudras, and that seems to be the gist of his quest for social justice.[130] Thus in Annihilation of caste he says, If you ask me , my ideal would be a society based on liberty, equality and fraternity an ideal society should be mobile, should be full of channels for conveying a change taking place in one part to the other parts.[131] He advocated that the roots of untouchability, annihilation of caste was absolutely essential.[132] He argued that Hindu society being a conglomerates or collection of castes and even caste being a close corporation and obviously to accept the untouchables.[133] In evidence before the Southborough committee he exerted the theme of this thesis. "The exact description of the treatment can not be attempted. The word "Untouchable" is an epitome of their ills and sufferings. Not only has untouchability arrested the growth of their personality but it comes in the way of their personality but it comes in the way of their material well- being. It has also deprived them of certain civil rights. The untouchables is not even a citizen, citizenship is a bundle of rights such as personal liberty, personal security, right to hold private property, freedom of opinion, speech right of assembly , right of representation in

a country's government and right to hold office under the state. There are the interests of the untouchables. And as can be easily seen they can be represented by the untouchables alone. They are distinctively their own interest and none else can truly voice them. Untouchability constitutes a definite set of interests which the untouchable alone can speak for. Hence it is evident that we must find the untouchables to represent their grievances which are their interests and Secondly, we must find them in such numbers as well constitute a force sufficient to claim redress.[134] In a statement to the Minorities Committee of the Round Table Conference Dr. Ambedkar recommended that the depressed classes can not consent to subject themselves to majority rule in their present state of hereditary their emancipation from the system of untouchability must not be left to the will of the majority. The depressed classes must be made free citizens entitled to all the rights of citizen ship is common with other citizens of the state.[135] He believed that these political safeguards for the depressed would be incorporated in the future constitution of self Governing India. Dr. Ambedkar submitted a memorandum to the Simon Commission demanding joint electorates with reservation of seats for the depressed classes.[136] Be that as may be, his narration in the above said works was a conceded movement to solve the vexed problem of untouchability. To him, it was a class struggle between the touchable majority and the untouchability minority, solving the problem of untouchability meant securing to the minority liberty and equality of opportunity which were denied to them by the hostile majority of touchables.[137] Not only study but an in-depth understanding of Dr. Ambedkar's social justice vision as reflective in the Constitution of India is imperative. When Pandit Jawaharlal Nehru

moved the objectives Resolution in the constituent Assembly.[138] It was felt that it suffered from certain lacunae, and as such Dr Ambedker sharply reacted to the clause relating to social, economic and political justice. He opined as under-

I should have from that point of view expected the resolution of state in most explicit terms that in order that there may be social and economic justice in this country, that there would be nationalization of industry and nationalization of land. I do not understand how it could be possible for any future government which believes in doing justice, socially, economically and politically, unless its economic is a socialistic economic. Therefore, personally although I have no objection to the enunciation of the propositions, the Resolution is, to my mind, some what disappointing.[139] It is evident that Dr. Ambedker's this comment was addressed to the benefits of the untouchables for these always remained near and dear to Dr. Ambedkar, and probably that made K.M. Munshi to say if Dr. Ambedkers scheme were accepted "the state would be a totalitarian apparatus run for the benefit of the Scheduled Castes asses in which the majority would be politically reduced to the status of second class citizens.[140] Be that as it may, Munshi appreciated saying that Dr. Ambedkar, though utopian in his views, and no doubt tilted in favour of the Scheduled Castes, yet evinced a rare sense of proportion in the discussion in the constitution Drafting Committee.[141] Social justice is embedded in the Constitution of India, but left undefined, social justice is a relative concept taking in its wings the time and circumstances, the people their traditions and aspirations, their turmoil and torments, their backwardness, blood sweat and tears.[142] The virtues of social justice suffer from the vice of artificiality of social

inequality and social inequality, as such assumes a particular responsibility to include with in its fold and sweep a most comprehensive sense of economic justice and social justice.[143] Thus the concept of social justice aims at removing all inequalities and affording equal opportunity to all citizens in social affairs as well as economic activities.[144] The Constitution of India brings a renaissance the concept of social justice when it weaves a trinity of it in the preamble, the Directive Principles of state policy and the fundamental rights, and this trinity is "the core of the commitment of the social revolution.[145] This is the "conscience of the Constitution[146], it is born from the womb of the freedom struggle. It may, however, not be out of place to mention that the kindly trinity of social justice is woven in the preambulary fabric to constitute India into a sovereign, socialist secular-Democratic Republic and to secure to all its citizens justice , social , economic and political liberty of thought, expression belief, faith and worship , equality of status and of opportunity, and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation. This indeed in social justice guaranteed by the Constitution of India because it strives to create a balancing wheel between freedom, political economic and indeed makes the survival of democracy.[147]

To, Dr. Ambedkar, the consummation of these principles of liberty, equality and fraternity form a union of trinity which gives unity and solidarity to social life. Obvious, the most important part of Dr. Ambedkar's careers was, in a nutshell, to secure social and political equality. He argued that the country must be placed above community. Evidently, it is worth remembering that Dr. Ambedkar issued a call to

the untouchables that it was their duty to depend India's hard won freedom, identity their interests with the whole of Indian people, in the past the Harijans had a narrow outlook and thought in terms of the welfare and prosperity of their community and themselves, now the time had come for them to change their outlook and think in the wider interest of the nation as a whole.[148] say that this preamble embodies what is the desire of every member of the House that this Constitution should have roots, its authority, its sovereignty, from the people, that it has,[149] and naturally, it may directly discern that this preambulary language vouches of social justice for all the Indians irrespective of their religion, caste, sex, place of birth, descent residence and such type of social justice aspires to cleanse the "unity in diversity.[150]

Dr. Ambedkar dreamt India to be an egalitarian state, a casteless society. In his draft constitution he includes safeguards for the minorities. There was a lot criticism in the Constituent Assembly. He emphasized that it was a wise decision taken by the constituent Assembly. In India both the minorities to deny the existence of minorities, it was equally wrong for the minorities to perpetuate themselves, a solution must be found which would serve a double purpose, it must recognize to existence of the minorities to start with, it must also be such that it would enable the majority and minorities to merge some body into one, the solution proposed by the constituent assembly was to be welcomed, because the safeguards in the long run could have the most desirable effect of merging the minority in to the majority so that there would remain no need of safeguards.[151] Whether this dream of Dr. Ambedkar will come true seems to be away from stark reality . This may be perhaps on account of Dr. Ambedkar's inner

feelings of social justice which he expressed at the meeting convened on behalf of the Scheduled Castes federation of Bombay on 11th January, 1950, where in he was presented with a golden casket He had entered the constituent Assembly with he sole object of safeguarding the interest of Scheduled Castes and not with the ambition of drafting the Constitution.[152]

Dr. Ambedkar was of the view that social justice alone could lead to social harmony and social stability, and kindle patriotic feelings to achieve this, the depressed classes have to "educate, agitate and organize" themselves. Dr. Ambedkar's belief was that the Constitution should provide fundamental rights and equality, social economic and political to all citizens in as much as that the Scheduled Castes and Scheduled Tribes should not be segregated from the general public.[153] But only this would not be enough because the more powerful the highly privileged higher classes may be able to deny them to the lower strata of society. Therefore, law must provide remedies against the invasion of fundamental Rights. It is in this perspective that Constitutional perspective that Constitutional remedies, now have been prescribed in Article 15 (4) 16 (4)29(2), 335 on the ground that it was needed to empower the state to carryout the Directive Principles [154] by ensuring that the fundamental Rights guarantees of equality did not obstruct substantive equalization.[155] The constitutional prescription has come to be known as protective or compensatory discrimination which enumerates three basic types of preferences, viz, first reservation which allot or facilitate access to valued position or resources, for instance, reservation of seats in legislatures, reservation of posts in governments services, and the reservation of places in academic institutions (Higher

technical and professional colleges), reservation device in the distribution of land allotments, health care, legal aid third provision for special protections, housing and other scarce resources, second programmes involving expenditure or provision of services, for example, scholarships, grants loans land allotments, for example distributive schemes to protect the backward classes from being exploited and victimized , prohibition of forced labour.[156] Speaking on the preferential policies for the reservation of seats in legislative bodies, Dr. Ambedkar held the view: "this is first time that I hear that such a concession should be extended to the backward classes. Hitherto the concession that have been spoken of as being necessary for the upliftment of the backward classes are educational concession and concessions in the services of the country.[157] However, the term backward classes has remained to be a problematic phrase, and it is still unclear as to what this term is Dr. Ambedkar claimed the notoriety of this phrase in the constituent Assembly. "A backward community is a community which is backward in the opinion of government".[158] It is perhaps on account of this sweeping power given in the hands of the government that this clause would not only be "a paradise for lawyers",[159] but even a paradise for the governments. The idea behind the protective compensatory principles is for the purpose of mitigating inequalities, it is envisaged that society must intervene in order to ensure that the competition is fair and not just, free it seeks to take needs into account, and at the same time to provide some cushion against the excesses of intemperate competition.[160] Nevertheless, both Articles 15 and 16 as amended by first amendment to the constitution emphasis both on merit and need, that is individual merit and the needs

of groups or classes of citizens. However, the emancipation of the scenario of the problem lies in the most appealing approach of Dr. Ambedkar's own words:

"We have to safeguard two things, namely the principle of equality of opportunity and of the same time satisfy the demand of communities which have not had do for representation in the state."[161] It will be no exaggeration to state that the emphasis of the Directive Principles of state policy seems to be some what different, that is , here the state (state here is the composite of legislature, executive and judiciary) have been given the mandate to direct its policy in such a way that the objectives of social justice are realized to its full brim , and as such the state is to take into account the special needs of certain strata of society, and to make special provision provisions for equalizing the unequal conditions obtaining among the different strata.[162] Though Directive principles have no legal force, but the supreme value of these Directive Principles of under our supreme lex" is primarily entrusted to the Court system in India.[163] Thus, in Dr. Ambedkar's own words:

"It is said that the Directive Principles have no legal force- I am prepared to admit it.. But I am not prepared to admit that they have no sort of binding force will nor I am prepared to concede that they are useless because they have no binding force in law. The draft Constitution as framed provides a machinery for the country. It is not a contrivance to install any particular party in power as has been done some countries. Who should be in power is felt to be determined by the people, as it must be, if the system is to satisfy the lists: democracy, but whoever capture power will not be free to do what he likes with it. In

the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He can not ignore them. He may not have to answer to their breach in a court of law. But he will certainly have to answer for them before the electorate at election time. What great value these directive Principles posses will be realized statement of Dr. Ambedkar vividly demonstrates that it is only the political will having the testament of social justice before it under the supreme Lax which realize the goal of social justice. If the political will have hesitates to realize the social justice then judiciary will step into correct the state lawlessness. It seems that the state nihilism alone Pave the way for the Supreme Court to translate this social justice into reality through her innovative as well as craftsmanship attitude when she reads Directive Principles (e.g. Article 39 A) in fundamental Rights (e.g. Article 21). It seems that Justice V.R Krishna Iyer rightly conceded when he made this observation.

Social justice is the end , judicial justice is the means, the legislative and executive operations are human engineering, and together the three braches of government have to work in comity so that the Constitution may fulfill what the founding fathers designed.[164] Social justice sketched above can not realized by law, or supreme Lex, or social legislation alone, but in the Present day crises many more agencies have to play a significant role to achieving the objectives of social justice .Besides untouchables , these are other disadvantaged groups of the society who too are depressed are in quest to have access to social justice as realized by the founding fathers of the Indian constitution in general and Dr. B.R Ambedkar in particular could only be perceived pragmatically if we give an unparalleled insight into it, give to

disadvantaged groups of people (in both rural and urban areas) who, in their ignorance and tack of organization, are being cheated , oppressed , and denied their basic human rights and fundamental freedom.[165]

Dr. Ambedkar was not against the very existence of Hinduism and Hindu leaders, but was against its wrong ideals adhered to them. According to him, Hinduism gave no support to social unity. Hinduism and social union are incompatible. Hinduism the traditional social structure is the greatest obstacle of Hindu unity- Hinduism creates an eagerness to separate.[166]

On this social unity depended socialistic feeling, national integration, demonstrate ideal and spiritual fellow ship. He accepted that Hinduism was once a "missionary religion" According to him, Caste was incompatible with conversion. It dragged Hinduism into a religion of inequality' what was required was to purge it of the doctrine of Verna system. It was wrong to think that he wanted to destroy Hinduism .His again concern was to reform and reconstruct it .He said "The Hindu society should recognized on two main principles: equality and the absence of castiesm"[167]. Without such internal strength, swaraj for Hindus may turn out to be only a step towards slavery.[168] He regarded that Vedantic idealism was nothing but a Brahmanical counter poise to the liberalizing role of the Buddhist movement. To him "Buddhism was a revolt against" Parasitic luxury and it prepared the foundation of 'a prosperous and glorious civilization' Religion, as Dr. Ambedkar conceived, was a rational one, a moral one and a spiritual one. It was secular and not extramundane. He regarded Dhamma is social.[169] His view of religion was social and secular and morality was the key-note of

it. He remarked in Dhamma, there is no place for prayers, Pilgrimages, rituals, ceremonies or sacrifices. Morality is the essence of Dhamma, without it there is no Dhamma. He described Dhamma as righteousness, right relations between man and man in all spheres of life. One man, it he is alone, does not need Dhamma. But society can not do without Dhamma, i.e. right relations" Dhamma as Religion this rejects belief in God, belief in soul, worship of God, caring of the erring soul, propitiating God by prayers, ceremonies, sacrifices etc. In short, he regarded Buddhas Dhamma as true religion, the purpose of which was to reconstruct the world by establishing right relations among human beings.[170] The Buddhist way of life, thus aimed at the moral regeneration and emancipation of human beings, each member of society had to strive for his own mort progress as well as that of other individuals. The Buddhist way of life was further divided into two paths the Buddhist way for the laity and the Buddhist way for the Bhikkus, these included the whole range of moral behaviour patterns in Buddhist society that Dr. Ambedkar strive for. According to him, the Buddhist social approach was more comprehensive and humanistic than the Marxist view of man and society. Buddhas teaching he thought was more suited to the needs of practical social life .Buddha tried to blend the socio-economic and political ideas on the basis of moral foundations. By stressing the unity of individuals on a social and political level he endeavoured to transform human life into and liberty, love and sympathy. Moral and religious life, as he conceived it, was based on the conduct of man in society. Inspired by Buddha's sense of love and kindness. He went forward to do the great work of service to humanity. According to him, ninety percent of Christianity was copied

from Buddhism, both in substance and in form.[171] He regarded only four preceptors Shri Krishna, Buddha, Christ and Mohammed. Buddha appealed to him most as he always preached that his disciples should not obey his commands but should follow the dictates of their conscience. There was no God in Buddhism, but the place of God was taken by morality. To him, Rama Krishna and Gandhi were the apposites of Brahmanic religion they were of no use to establish democracy. Only Buddha can be only of any use in this respect. According to him, democracy and Chaturvernya are mutually exclusive. To eradicate Chaturvernya, there was no other medicine except the Philosophy of Buddha. In order to purify the currents in politics Dr. Ambedkar suggested that all Hindus should observe birthday celebrations of Buddha.[172] The conception of a secular state was derived from the liberal democratic tradition of the West. It was the state that guaranteed individual and corporate freedom of religion and dealt with the individual as a citizen irrespective of his religion constitutionally it was not connected to a particular religion nor did it seek other to promote or to interfere with religion.[173] So freedom of religion, citizen ship and the premises on which the separation of state and religion were the premises on which the super structure of the secular state was raised. Dr. Ambedkar maintained that no institution which is maintained wholly out of state funds shall be used for the purpose of religious instruction irrespective of the question whether the religion instruction was given by the state or by any other body.[174] Participating in the debate on the Hindu code Bill in Parliaments in 1957, he explained the concept of secularism as follows "It (secular state) does not mean that we shall not take into consideration the religious sentiments of the

people. All that a secular state means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people. That is the only libation that the constitution recognizes.[175] According to him, firstly, the multiplicity of religions and their subdivisions make it impossible for the state to treat the children of all these communities on a footing of equality and to provide religious instruction even it the principle was accepted. Secondly, the religious are wrong. He remarked: In view of this, it seems to me that we should be considerably disturbing the peaceful atmosphere of an institution of these controversies were brought into just opposition in the school itself. Therefore, in laying down that in state institutions these should be no religious instruction, we have, in my judgment, traveled the path of complete safety.[176]

Dr. Ambedkar looked for harmony between the principles of religion and the laws of the land. There should be no contradiction and antagonism between religion and law. This was to him, essential for the betterment of human society. He wanted that no individual should be compelled to pay taxes, the proceeds of the which were specially appreciated for the use of any religious coercion either by same community of which he was not a member. He did not favor any religious coercion either by same community or by the state. State coercion especially in religious matter was least desirable in Dr, Ambedkar's scheme of social and political life. To law, all religions were respectable. He had a strong faith in the principle of secularism. Smith and Luthera have dealt with the problem of secularism in India. Luthera concluded that India is not and can not be secular state. Smith disagreed with this conclusion. Because, it proceeds, from too narrow a definition of the secular state (Luthera equates it with separation and of

state and religion, which is only one of the three components in the definition of Smith) and takes too static a view of Hindu religion. The separation of state and religion and other provisions depended by Dr. Ambedkar show that the general content of secularism was contained in his thought. His secularism was of a radical in type and rebelled against any religious ill-treatment hatred and discrimination.[177]

A genius is not merely a learned man, but he is also essentially an intellectual. There is a vast difference between a learned and an intellectual. A learned person is a man who is always confined to the interest of his own class even at the cost of other classes. He does not transgress the limits of his class whereas an intellectual is an enlightened person who is devotedly interested in the welfare of all.[178] The aim of an intellectuals life is the emancipation of ignored humanity, Dr. Ambedkar, as a genius, was not merely a learned man, but also an intellectual, who sacrificed his life for the dignity and uplift of the poorest of the poor of the world. As a spokesman of ignored humanity, he created human right to all and brought all man on the par of social equality. His aim was not communal and limited to personal benefit, but it was essentially social and human related to all who suffered from tyranny and exploitation.[179] Ambedkar chooses his social reform approach only after under standing the reality of the status or women. He traces the existing law profile of famine's status in India to Manu and his predecessors. Ambedkar says propounded a theory of perpetual slavery for women. Manusmiriti laid down certain rules and code of conduct for women according to which women should not be allowed free vein in any respect. Accordingly men treated women as objects of pleasured created only for pleasing them. The right to education and the

right to property is denied to women. Manu says that women should always be strictly controlled by their guardians: father when she is unmarried, husband after marriage and son in her old age.[180]

About the status and position of women as given by Manu. Ambedkar says: can any body doubt that it was Manu who was responsible for the degradation of women in India? Most people are perhaps aware of this. But they do not seem to know two facts. The first thing they do not know: What is peculiar to Manu. There is nothing new and stating in the laws of Manu about women. There are views of Brahmin ever since Brahminism was born in India. Before Manu to impose these disabilities upon women, Shudras and women were the two chief sections of the Aryan society which were flocking to join the religion of the Buddha and theory undermining the foundation of Brahmine religion Manu wanted to stem the tide of women flowing in the direction of Buddism.[181]

Actually social status by definition is the position occupied by a person family or kinship group in a social system relative to others. The social status is determined by education , income possessions and the social valuation and occupation and of other activities in society The high status given on the one hand by religion , can be taken away on the lake of financial only when all, the contributing causes are favourably disposed only then we may have a high status for women.[182]

While the Hindu women may aspire for the right to choose their life partners any may desire always in marriage regulations and family pattern, the typical male-dominated pratriached Hindu family does not want to increase the options for its women folk, Even in the

socialization of the female child the Hindu family encouraged, duty is emphasized, ambition is not encouraged, obedience and self control have greater familial approval. All these factors generally result in the formation of a very compliant personality. Despite all these political and legal safeguards, there are many a slip between the cup and the lip and women are still the subjects of disparity, intolerance and aggression. Finally, it may be suggested that mere legislative reforms for the upliftment of women will not suffice. There has be a change in the outlook of the common man. This change is possible only through proper and effective education. This education should start from the primary level itself.

REFERENCES

1. Kachroo, JL and Vijay Kachroo, Society in India (1981, Delhi) p. 90.
2. Id. at 91.
3. Dhananjay Keer, Dr Ambedkar: Life and Mission (1994, Bombay). pp. 14- 15
4. R.B.Rao, Bharat Ratna Dr, Ambedkar, (1993, Allahabad) p. 3.
5. Shabbir M., B.R. Ambedkar, Study in Law & Society (1997, Jaipur) pp. 78- 79.
6. Ibid.
7. Supra note 3 p. 102.
8. Supra note 1 p. 104.
9. Supra note 1
10. Id. at p. 91.
11. Chandra Bipin, Modern India (1977, New Delhi) p.217.
12. Id. at 218.
13. Ibid.
14. Mohd. Taj, Caste Society Social Justice and the Constitution of India: Dr B.R Ambedkar's perspective. (Master Dissertation, 2005) p. 38.

15. Mehta B.L., Making of Indian Constitution: A Critical Evaluation of Ambedkar's Role' Civil and Military Law Journal Vol. 1 Nos: 12 (2004) p. 15.

16. Supra note 14 at p. 301.

17. Ibid.

18. Ibid.

19. Ibid.

20. Id. at p. 302.

21. Ibid.

22. CAD., Vol, II, p. 76.

23. Palmer, Norman D, The Indian Political System (1971, Boston) p. 13.

24. Ibid

25. Ibid

26. M.V. Pylee, Constitutional Government in India (1961, Bombay) p. 138.

27. CAD, Vol. VII, pp. 33-34.

28. Id. at 36.

29. Supra note 14 at p. 310

30. Ibid.

31. Ibid.

32. Ibid.

33. Id. at p. 312.

34. Ibid.

35. Ibid.

36 Ibid.

37 Gallenter, Marc, Competing Equalities: Law and the Backward Classes in India (1984, New Delhi) p. 19.

38 Ghurye, G.S. Caste and Class in India (1969, Bombay) p. 270.

39. Parmaji, Sabinkar, Caste Reservation and Performance (1985, Warangal) p. 18-19.

40, Id. at 20-21.

41. Supra note 14 at p. 169

42. Ibid.

43. Ibid

44 Id. at p. 170.

45. Ibid.

46. The Legislative Assembly Debates, Vol, III pp. 3899- 926.

47. Supra note 14 at p. 141

48. Memorandum submitted by the Government of Bombay to the Indian Statutory Commission, 1928, (1929) p. 228.

49. Id. at p. 44.

50. Supra note 14 at p. 143

51. Ibid.

52. Supra note 14 at p. 174

53. Ibid

54. Ibid

55. Id at p. 175

56. Id at p. 182.

57. Dr. Ambedkar, Castes in India (1916) Para 6-9. It is only a paper read by him before the Anthropology Seminar (19th May, 1916) of Dr. AA Golden wiser Columbia University, USA. Only the title Castes in India, will Indicate the reference to it.

58. Id Para 10

59. Id. Para 11

60. Ibid.

61. Id. Para 12.

62. Id. Para 13.

63. K.L. Bhatia, Dr. B.R. Ambedkar, Social Justice and Indian Constitution (1994, New Delhi) p. 137.

64. Kuber W.N., Dr. Ambedkar: A Critical Study (ed. Ist , 1979, New Delhi) p. 49.

65. Supra Note 11 at 138.

66. Supra Note 11 at 51.

67. Ibid

68. Ibid.

69. Id. at 139.

70. Ibid.

71. C.K.Allen, Aspects of Justice (1958, New Delhi) p. 12.

72. Ibid.

73. Id. at 3

74. Id. at 4.

75. Ibid.

76. Id. at 11.

77. Id. at 14-15

78. Id. at 49.

79. (1955) ISCR 991.

80. Id. at 1001- 1002.

81. 59 Bombay. LR 836.

82. Id. at 844.

83. Basu, D.D., The Directive Principles of State Policy in the Constitution of India (1972, New Delhi) pp. 61- 62.

84. Supra Note 14

85. Id. at 31.

86. Justice, Y.V. Chandrachood, The Challenge of Social Justice, Supreme Court of India Publication, Third International Conference of Appellate Judges (1985, New Delhi) pp. 2-3.

87. Id. at 3-4.

88. K.L Bhatia, "Kalido Scope View of Jurisprudential Dimen's of Judicial Activism and social change (1990, New Delhi) p.155.

89. Id. at 156.

90. Id at 158

91. Iyer V.R Krishna, Social Justice, Sunset or Dawn (1987, New Delhi) P. 23.

92. Id. at 51.

93. Ibid.

94. Austin, Granville The Indian Constitution: Corner stone of a Nation (1972, Bombay) P.51

95. Supra Note 39 at 50.

96. Supra note 14 at 26

97. Justice V.R Krishna Iyer, the Judicial system, has it a functional future in our Constitutional order (15) 1979, Civil and Military law J. 163 at p. 168.

98. Id. at 169.

99. Id at 115

100. V. Chandra Mowli , B.R.Ambedkar, Man and his Vision (1959, New Delhi) p. 52.

101. Speech on all India Radio on October, 3, 1954, as mentioned I L R Balley (ed.) Thoughts of Ambedkar (1989, New Delhi) pp. 73-74.

102. Constituent Assembly Debate Vol. XI, Book No.5 Second Report (1989) p. 979.

103. Vasant Moon al (ed) Dr.Ambedkar, Ranade Gandhi and Jinnah in writings and speeches of Dr. Ambedkar Vol.1. (1943, New Delhi) pp. 57, 22- 23.

104. Ibid.

105. Ibid.

106. Ibid.

107. Ibid.

108. Bhatia KL, Hariom and Rekha Chowdhry Social Justice of Dr. B.R. Ambedkar (1995, New Delhi) p. 19.

109. Ibid.

110. Supra note 11 at 289

111. Id at 288.

112 Writing and Speeches of Dr. B.R. Ambedkar Vol. 1 at 63.

113. Writing and Speeches of Dr. B.R. Ambedkar Vol. 3 at 250

114. Writing and Speeches of Dr. B.R. Ambedkar, Vol. 4 at 310

115. Wring and Speeches of Dr. B.R. Ambedkar Vol. 5 at 402

116. Writing and Speeches of Dr. B.R. Ambedkar Vol. 7 at 715

117. Ibid

118. Ibid

119. Ibid.

120. Ibid.

121. Id at 290.

122. Ibid.

123. Supra note 100 at p. 68

124. Id. at 75.

125. Id. at 41.

126. Ibid,

127. Id. at 23.

128. Ibid.

129. Ambedkar, B.R., Annihilation of Caste (1935, Lahore)

130. Ibid.

131. Id at 256.

132. Supra note 14 at p. 198

133. Ibid.

134. Ibid.

135. Ibid.

136. Id at p. 199

137. Ibid.

138. CAD, Vols, 1- VI, Second Reprint 1989, pp. 57- 65.

139. Id. At 99- 103.

140. Vide, K.M. Munshi Papers , Vol, p. 184.

141. Id at 202.

142. Id at 204

143. Id at 206

144. Ibid

145. Id at 60

146. Id at 54.

147. Supra note 14 at p. 200

148. Ibid.

149. CAD, Vol, Nos X- XII, 1989 Reprint. P. 456.

150. Ibid

151. CAD, Vol, VII 1989 Reprint, p. 661.

152. Article 38, 39A, 46.

153. Gallenter, Marc, Competing Equalities: Law and the Backward Classes in India (1984, Delhi) p. 368.

154. Id. at 41- 44.

155. Parliamentary Debates, Vols XII- XIII (Part II) Cols 9141- 49 (19 May, 1951).

156. CAD, Vol VII, 1989 Reprint, p. 702 The backward was coined and devised by the Drafting Committee.

157. CAD, Vol VII. 1989 Reprint, p. 699.

158. Andre Betellie , The Backward Classes and The New Social Order (1981) pp. 21- 22.

159. CAD. Vol, VII 1989 Reprint, pp. 701- 02.

160. Ibid

161. CAD , Vol, VII 1989 Reprint at p. 41.

162. Supra Note 14 at p. 204

163. Ibid

164. Id at p. 205.

165. Justice P.N. Bhagwati, Report on National Judicature Equal Justices Social Justice (1978), Justice V.R. Krishna Iyer, Processual Justice To People- Some Institutional Perspective (21) 1985 Civil and Military Law Journal, 7 et, al.

166. Supra Note 14 at p. 269

167. Ibid.

168. Id. at p. 270.

169. Ibid.

170. Id. at 272.

171. Ibid.

172. Dr. Ambedkar's Speech in Kathmandu, 20th November, 1956.

173. Ibid.

174. Smith D.E., India: As a Secular State (1963, New Jersey) pp. 3-4.

175. Parliamentary Debates, Vol. III Part II, 1951, p. 2466.

176. Ambedkar B.R., The Untouchables (1948, New Delhi) Preface-II.

177. Jatva, D.R., The Political Philosophy of Dr B.R Ambedkar (1965, Agra) p. 41.

178. IX: 3 Manusmiriti- Her father protects (her) in childhood, her husband protects (her) in youth, and her son protects (her) in old age, a women is never for independence.

179. A Hariprasunna, 'Ambedkar and the Upliftment of the Status of Women (1979, New Delhi) p. 113

180. Supra Note at p. 178

181. Supra Note at p. 179

182. Supra Note 38 at pp. 270- 280.

CONCLUSION AND SUGGESTIONS

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Conclusively speaking the study reveals that Social Justice is the signature tune of the Constitution of India. This belief has paramount position in our society because struggle for freedom has not been only, political but economical and Sociological too. Mahatma Gandhi, J.L. Nehru, Dr. B.R Ambedkar and other great Indian Leaders visualized the imperatives of Independence in fulfillment of Social, Economic and Political equilibrium. Running right through the warp and woof of the fundamental laws, we find great inclinations for the betterment of weaker sections. The masses have suffered great Social injustice. The curtain of poverty is too strong and if peaceful transformation of the nation into an egalitarian policy is not achieved, there would be disruptions which is bound to destroy the peace and progress of our country.

The weaker sections shall be salvaged and a better deal be given so as to inject justice and good conscience into an Indian way of life. The only way for a backward community to come forward on its dynamic march towards socialism is the adherence to the principle of the rule of law and social justice. The fighters of the Indian freedom and the Architects of India constantly reminded the nation that the route to victory is laid along the path of rule of law. The overall backwardness of the Scheduled Castes and other weaker sections of our society were presumed for the safeguard of their interests by providing a special protection under the doctrine of protective discrimination. The relevant provisions of the Constitution of India devoted for the protections of the

weaker sections can not be translated into action till the moment our executive and judicial wing of the state is not sincerely committed. The role of Judiciary in context of interpreting of the Constitutional provisions meant for the protection of the weaker sections reveals that our judicial system is alive to its job understanding the new dimensions of Constitutional protection of the weaker sections satisfying the end of equality.

The Constitution recognizes certain categories of weaker sections is based on social, economic and political criteria, secondly is based on social outlook and thirdly the weakness and weaker is based on economic factors which governs the relation between a strong employer and weak workers, politically are those who are numerically in minority and unable to assert their constitutional rights against majority. The Scheduled castes, women and other weaker sections need special care and protection to utilize their position to that of socially, educationally and economically forward communities in terms of the constitutional mandate.

No doubt, various schemes and programmers meant for the betterment of weaker sections to satisfy the spirit of the doctrine of equality have to be implemented through the Legislative and Executive organs of the state, nevertheless, the judiciary has to work as a watch dog and it has to weight the various competing interests for keeping proper balance.

The Concept of equality implies the absence of any privilege by reason of birth, creed, sex and colour in favour of any individual or class. The philosophy introduced in Article 14 of the Constitution constitutes the basic feature which can not be diluted by any amendment of the

Constitution according to the procedure as laid down under Article 368 of the Constitution . However reasonable classification is allowed to satisfy the constitutional objectives.

Article 15 and 16 rule out discrimination on the ground of religion, race caste etc. however, provide certain provisions for preferential treatment under the doctrine of protective discrimination to depressed classes like women, children, backward classes and Scheduled Castes have been secured in order to mitigate the strict adherence to the equality rule These two Articles provide two sets of concessions of protective discriminatory troops Article 15 allows preferential treatment in favour of socially and educationally backward classes or for the Scheduled castes whereas Article 16 speaks in favour of backward classes who are in opinion of the state are not adequately represented in the services under the command of the state.

The study establishes that judiciary is willing to keep proper balance between the interest of the scheduled caste sided by social interest in disallowing such preferential treatments which results into development in class interest in favour of the 'creamy layers' of such communities. It also clarifies that if Scheduled Castes have attained high status they should be kept out side the pale of the protective discrimination. The Judiciary has usurped the power of policy consideration as to whom preferential treatment be allowed and ruled that the religion and caste, constitutionally prohibited criteria for discrimination, can not be the basis of the Governmental policies. The Judiciary is correct in hammering on the point that Government protective discrimination policy should not be based on excessive distinction of protective

discrimination which may lead to decline the educational standards and administrative efficiency. Thus, judiciary has always been cautious on balancing role in safe guarding the interest of weaker sections. The Hindu rigid caste system has its religions origin. Rigid caste system gave birth of upper caste and lower Caste considerations. This effected the cohesiveness of the Hindu society. This rigid caste system which is responsible for the creation of the so called untouchables Scheduled castes prompted Dr. Ambedkar to stand and fight out for the egalitarian and casteless society. The so called untouchables Scheduled Castes and other weaker sections of society form the lowest strata of the Hindu society while the Brahmins were treated to be a symbol of religious superiority and intellectualism. Dr. Ambedkar came forward with an aim to create society wherein caste consideration must have gone to its oblivion. According to him, caste is a barrier to social progress and the other individual advancement of the freedom. According to him, *Varna* and Caste are evil ideas. He has firm faith in cohesive society which he thought would eradicate the evils of rigid caste system and downtrodden classes into the mainstream of the natural life and then it will promote national unity and integration. He also argued for casteless society. According to him abolition of caste system would certainly create a congenial atmosphere which is infact essential for cohesive society that promotes national integration Dr. Ambedkar preached annihilation of caste for the re- organization of the Hindu Society.

Dr. Ambedkar was the man primarily responsible for bringing about a social revolution to secure human dignity for the oppressed Indians whose wretched life as untouchables that untouchability and discrimination are yet to be fully wiped out despite numerous concrete

steps taken by the Government of India. Indeed Dr. Ambedkar's multifaceted genius was highly evident throughout his cheered life. The great intellectual thinker and philosopher, a jurist par excellence and a prolific writer, he was the prime architect of the Constitution as chairman of the Drafting Committee. Dr, Ambedkar was the leader of the oppressed classes of India. He taught the oppressed to fight all kind of operations and make them realize the power of unity. Being born in an untouchable family, Dr. Ambedkar had first hand experience of the subjected to utter humiliation ever since he was born till later in many stages of his life, only to harden his determination to destroy that social system which perpetuated this cruelty. The long and heroic struggle which he undertook along with many of his brothers. When India became brought so many safeguards in favour weaker sections specially, the Scheduled Caste and other backward classes also banned untouchability and bring the downtrodden at par with other sections of the society, of course, the Constitution of India was hailed all over the world as a new charter of Human Rights'. The Constitution of India, being the supreme law of the land concedes that there is a suppressed humanity which needs special protection to improve their social, educational, economic and political condition. It assumes that certain social groups are historically unequal and have been victims of social discrimination due to Hindu rigid caste system and they deserve compensatory treatment through affirmative action of the state. The preamble of the Constitution of India ensures its quest for social, economic and political justice to every citizen of India and also offers special provision for the socially and educationally backward classes. It offers special treatment for neglected and oppressed segment of Indian

society especially the Scheduled Castes and other weaker sections. It provides mechanism to accord protection in favor of such segment of the society by the adoption of the doctrine of protective discrimination'. It aims for an egalitarian social order.

After the independence and implementation of the Constitution of India, a good interval of time has already been elapsed but despite the Constitutional promises a vast section of the Scheduled Castes and other backward classes are still struggling hard for social justice. The Constitutional assurance for the creation of classless society befitting equality and human dignity is shattered by the rampant practices of untouchbility and forced labour system. Such practice denies the Constitutional mandate of equality before law and equal protection to all.

Under Article 17 of the Constitution, the untouchability is abolished and its practice in any form is forbidden. However, still it is in existence. The Constitution of India declares that laws have been enacted to enforce any disability arising out of such disability and to punish those who create such disability. Study reveals that the problem of untouchability is of historical origin which has already been dealt in detail despite the efforts made by the great men like Mahatma Gandhi, Dr. Ambedkar and Ramanujacharya who focused public opinion in this regard to remove all social disabilities of the *Harijans*, the *Harijans* continued to live apart from the four castes of the Hindus. To improve their lot even before the commencement of the Constitution of India various legislative measures were introduced, but could not improve their condition satisfactorily. By the abolition of untouchability, a social

order was dreamt by the makers of the Constitution of India. The abolition of untouchability was made to prove the new pattern of social behaviour but the same was not achieved to the expectations of the framers of the Constitution. The scheduled Castes and Scheduled Tribes still remain poor, exploited and subjugated to social, economic and political disabilities on the ground of untouchability. They have been denied even excess to drinking water and other places of public utility.

Despite Constitutional guarantee against the exploitation, the bonded labour system still exists and the majority of the victims belong to the Scheduled Castes and other backward classes. There is an Act namely Bonded Labour System (Abolition) Act, 1976, providing punishment for the practice of bonded labour another inhuman practice which does still exists in India. In order to give relief to those who had suffered for centuries the adverse effect of Hindu rigid caste system and as a consequence who had been deprived of equal status and equal opportunity, the Constitution provided under Article 15(4) and Article 16(4) reservation for admissions to educational institutions and for the public jobs under the control of states and central government. Since the Scheduled Castes and weaker sections belong to the socially and educationally backward classes of India, hence under the doctrine of 'protective discrimination', Government has been empowered to take special measures for enhancing their status. It is matter of some satisfaction that many people who could not obtain higher position in social life earlier, due to socio-economic and political disabilities have now been able to get important positions, but still lot has to be done to give effect to the principle of equality. It is therefore, imperative that efforts both private and public should be made to fulfill the intention of

Dr. B.R.Ambedkar who is known crusader of social justice and Massiha of depressed humanity. Dr Ambedkar's cautious approach is echoed: "we have to safeguard two things, namely the principle of equality of opportunity and at the same time satisfy the demand of communities, which have not had so for representation in the state". Further, Dr. Ambedkar warned that "neither of them should be allowed to eat up other". It is an open secret that upper caste Hindus command economic heights, political power and key jobs in Government, however, contemporary trend establishes that backward classes and Dalit movement constitute a potent threat to them.

It is not happy trend that there is a much use of religion by upper Hindu caste in political affairs. Even the Shankaracharyas of various Dharam have involved themselves in such affairs. Despite clear negation by the election laws must not be use of religion in election processing even then at every level there is a violation of election laws as religion is being used for attaining the goal. The Scheduled caste and socially and educationally backward groups have not been given what they deserve. Their position in regard to economic status remained basically unaltered. Without a revolutionary change, economic base, no real change can be made. The Union Government of India has admitted in the Gazette of India, dated August 7, 1989, that despite various measures to improve the conditions of the Scheduled castes and Scheduled tribes, they are subjected to various offences, indignities, humiliations and harassment.

No doubt, it appears that the union Government of India in terms of Constitutional mandate exhausted efforts to save the scheduled Castes and scheduled Tribes and other weaker sections from humiliations,

harassments and atrocities. In this regard two legislative steps namely, the protection of Civil Rights Act, 1955 and the Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are noteworthy. The study reveals that these legislative measures could not improve their conditions because the concept of 'will' appears to be lacking on the part of those who are under obligation to implement them and also lackness of cautiousness regarding the responsibility on humanitarian ground for improving the status of suppressed humanity by the persons of upper caste.

The subject is a very important one from the point of view of the entire Indian society but it is complex one too. We hope and trust that we will be able to find some reasonable solution for the problem soon, bearing in mind what Dr. Ambedkar said "we have two safeguard namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the state" Dr. Ambedkar also warned that neither of them should be allowed to 'eat up' the other.

At the time of enactment of the Constitution, serious doubts were expressed by members regarding the suitability of the Parliamentary system in India. They emphasized many reasons and, one of them was the caste- ridden character of Indian society which was bound to affect the Independent decisions of the voters. The pattern of our representative democracy with its basic principles of "one man one vote" regardless of any ground of discrimination has drawn the social institution of caste into the web of electoral politicians. During the pre-independence era, the caste groups which were deprived of the

numerous privileges and opportunities has made use of it now. With inauguration of the new Constitution and with special reservations and safeguards for certain castes, Caste seems to have found scope to operate and has operated more effectively than before. part III and part IV of the Constitution have made reservations for the weaker sections of the society. Today, more and more Castes and communities claim for being dubbed backward. Implementation of the Mandal Commission Report was thought that it would keep the Indian society divided along caste lines forever and harm the integrity of the nation. Hence, it should not be taken as a criterion. Rangnath Misra Commission's report deserves to be taken into account in process of dealing with reservation matter.

It seems that no single test can be sufficient for delineating backwardness. Caste can not be made the sole basis of classification for reason that many sections of the Indian society do not recognize Castes in the conventional sense known to Hindu society. Article 340 makes it clear that Commissions can be appointed for investigating who are backward classes, and it would be contrary to the letter and spirit of the Constitution if such Commission made caste or religion the criterion for backwardness. Similarly, the test of occupation for determining "backwardness" presents many difficulties. The Hindu Varna system was originally based upon occupation that each Varna pursued. The choice of occupation was thus limited by accident of birth. Therefore, if occupation was adopted as the test for determining backwardness, it would ultimately degenerate into a 'caste' test for backwardness- an anomaly which must be avoided. Again, in the modern welfare state the concept of traditional occupation has become absolute and redundant. It

is no doubt that income test can certainly prove very useful in determining backwardness, but it is equally true that more than 70 percent of the population of India live below the line of poverty and there is considerable difficulty in the application of poverty test. It is, therefore, suggested that poverty, education, Caste, occupation, geographical placements and other factors must all be considered together to evolve a coherent and rational basis for backwardness.

Further no caste should be allowed to have vested interest in being called as backward. There is an urgent need to identify the receivers of protective discrimination, otherwise the great edifice of our democracy might suffer a jolt and crumble to places under the sheer weight of its own contradictions. The benefits of this policy can not be given to the undeserving people. Even if a class or a section of people is found to be backward today, the courts or the legislatures should not act on the presumption that class would continue to be backward for all times to come. Social Scientists would have conduct imperial studies periodically to assess the attainments of the members of that class in different walks of life. If such study reveals that backwardness of a class has ceased to exists, then class should be removed from the ambit of backwardness. It must be remembered that a stage must reach when even without claiming protection of backwardness, an individual may be able to get non- discriminatory treatment and equality of justice which of course, is a very difficult task and if sincere desire and effort is made, this problem can be solved. The people should rise above their self-interest and make the sacrifices required to eradicate the caste divisions because without that national unity and integration can not be maintained

In order to lift the Untouchables and the down- trodden people from the plight of social, economic and educational backwardness, Dr. Ambedkar wanted to incorporate sufficient safeguards in the Constitution. He insisted on the incorporation on the separate budget provision for promoting primary education amongst the children of the Scheduled Caste and the down-trodden people and also separate funds for promoting advanced education amongst them. An authority on public finance, Dr. Ambedkar maintained that expenditure on education of the such people could be given priority on the revenue expenditure of the states. Coupled with this provision Dr. Ambedkar mentioned that representation of the Dalits communities in the state and Central Governments should be maintained in accordance with their number, their needs and their importance. Such services as Judiciary, police and Revenue also should have an adequate quota from these communities. The demand for a separate electorate to ensure their representation in the legislatures and the local bodies is a matter which calls for a critical reassessment in the changed circumstances of today. Dr. Ambedkar's demand for statutory provision for the Scheduled Castes and backward classes representation on the Central and state public Service Commissions has found fulfillment in the Constitution of India.

In order to free the members of the down- trodden from the tyranny and oppression of the upper Hindu Caste, Dr. Ambedkar demanded separate settlements for the former. This he felt would ensure their social and economic security which would reestablish them in society. The demand for separate settlements is not a demand for separate States but it is to provide places of habitation to the down- trodden, which will be independent of the villages. The separate settlements calls for the

establishment of a separate Commission duly empowered to provide financial assistance to the members of the downtrodden for their all-round progress and development. The validly of this demand would not diminish so long a religious obscurantism and Caste prejudices stand in the way of humanist and democratic approach to various problems facing the Indian society. Far from being narrow minded and Chauvinistic, the demand for separate settlements was advanced by Dr. Ambedkar in order to initiate a 'New life Movement'. According to Dr. Ambedkar, the objects of the movement are, to free the untouchables from the thralldom of the upper Caste Hindus and to better the economic position of the untouchables.

In view of the rigidity of the Caste system as well all know, interdining, intermarriage became forbidden and number of social reformers had to exert themselves to minimize the effects of social inequality which took the form of untouchability, unapproachability etc. ultimately Article 17 of the Constitution which abolishes untouchability, had to be incorporated in the Constitution. A number of laws have been passed since then to make Article 17 effective. It is a matter of regret that even now though not openly, mainly indulge in the same practices and the implementation of the laws made for the benefit to weaker sections is made difficulty by vested interests. In order to give relief to those who had suffered for centuries the adverse effect of Casteism and as a consequence who had been deprived of equal opportunities, the Constitution enacted Article 15(4) and Article 16(4) providing reservation in the matter of admission to educational institutions and the public services of the States as well as in the Union Public Service Commission of the Centre. It is matter of some satisfaction that owing to

many measures– Legal, Social and political, many people, who owing to their birth, could not attain higher in social life previously have now been able to get into important positions. But more still remains to be done to give effect to the principle of equality which runs through the Constitution as the golden thread. It is, therefore, necessary that all efforts – both private and public- should be made to fulfill the intention of Dr. Ambedkar being the founding father of the Constitution.

The evils of untouchability has been a blot on our society, caste barriers from centuries together had led to social injustice, social isolation and economic oppression of a section of society. The age old injustice perpelirated upon the untouchables and other oppressed class of people was to be compensated through an effective and quick remedy the Constitution of India not only debarred untouchability through article 17 but realized the urgent need of social justice through protective discrimination in favour of these classes.

The Indian constitutional philosophy is based upon the notion that certain social groups in India are inherently unequal and are victims of social discrimination and thus required compensatory treatment. At the time of impedance and making of the Constitution of India one could have hardly visualized that the policy of reservation as a means of combating group inequalities would become a major source of social and political unrest. Over four decades of our experience with the quarter system is only a crude strategy of social reconstruction which it mismanaged will surely lead the society to traumatic tensions.

The basic structure of the Constitution envisages a cohesive unified and casteless society in which cutision ossified for centuries should become

merely the dust on the shelf of Indian history. The Mandal Judgment fractured the nation and disregarded the basic structure of the Constitution. The decision has revitalized casteism cleared the whole nation into two forward and backward classes and opened up chances for conflicts. It is disputed that 63 years of independence have changed the social, educational and economic landscape beyond recognition. They are cross of backward individuals in forward caste and cross of forward individuals in backward castes. The wise framers of the Constitution had originally provided a period of ten years to the scheduled castes and scheduled tribes, by extending the terms of reservations, the beneficiaries have become habitual of its does, it is no doubt unfortunate, that the govt. have been forced by circumstances to increase that period through amendments to Article 334 of the constitution first from 16 years to 20 years, from 20 year to 30 years, from 30 years to 40 years and then again from 40 years to 50 years. If the extension continues in this way then, there may be no end to end to the extension of this period.

To be more true the position of the Scheduled Castes today is neither in the interest of Scheduled Castes themselves nor that of the nation as a whole. Apparently the nation can not be developed as a nation when a large section of society remains isolated and deprived in the overall race for development. The nation can never approach its proposed destiny, if a large segment of its population is not able to enjoy equality of opportunity granted as a fundamental right to all citizens of India in the field of employment under Article 16(1) of the Constitution. This can only be done by providing them all possible supports in order to enable them to run shoulder to shoulder with their more fortunately placed

brethren in the race of national development. Unless this truth becomes clear to all concerned, we cannot afford to boast of providing equal opportunities, *enter-alia* in the matter of providing employment to all alike.

Only one generation should be permitted the benefit of reservation and the exceptional provisions and schemes be envisaged by the Constitution to meet special situation and the same must not be made a permanent feature. Any privilege if doodled out permanently makes the beneficiary a privileged class and gives wrong signals to others. This situation affects adversely the social harmony of the nation. Its gain should not at all be allowed to concern by a few who are already better off. Periodic review is necessary. Once a person has been benefited, he should not be further provided with this protective umbrella. The Umbrella should be shifted to others who need its protection and this process should continue subject to review and verification. The benefits of reservation should be given only once that is either at the stage of admission or recruitment or promotion and not at every stage of one's career.

Classification of backward classes should be dictated by different factors at different stages. A class which is declared as Backward may turn out to be the most advanced in a particular region or state with the passage of time. One who is economically poor shall be considered as backward because other norms of advanceness must be dependent upon this very factor. There must be some independent committee to review of the decision made by any government declaring the list of the backward classes. In most cases this depends upon political expediency.

Empirical studies should be conducted by the social scientific tests and the researchers to access the attainments of the members of that class in different walks of life. If such study reveals that the backwardness of a class has ceased to exist, the class should be removed from the orbit of backwardness. Further, the government which is certainly interested in the protection of merit and efficiency in general administration and expertise in specific branches of services must maintain a balance between merit and concession.

A Permanent National Commission for backward classes must be established which must carry out sociological and economic study from state to state and from region to region. This Commission shall look after the adjustment and re-adjustment of programmes in proportion to the nature, degree and extend of backwardness. All such programmes must stand the test of judicial review whenever challenged. The framers of the Constitution by enacting Article 340 clearly envisaged the setting up of such high powered National Commission for backward classes at the Centre. Following the apex court pronouncement in Mandal Case, the government of India appointed the permanent Commission on backward classes under Justice R.N. Prasad.

The reputation of the state lies in its people. It is the national character that makes the nation. This national character is exhibited not in adopting, begging but in creating wealth out of sincere efforts. All the policies and schemes laid down in the Constitution or other legislations should be framed, carried and continued keeping this fact in view. It is very unfortunate that the policies of votes have acquired an upper hand in India for short lived personal benefit. It is very tragic that by creating

such classes in the society the parties in power are doing massive loss to national character and national pride. The political parts have misused the true round, to the nation building and they are building these won destinies by prescribing medicines worse than the disease.

The Constitution of India is a living testimony to the greatness and vision of Dr. B.R. Ambedkar. His life was in era of great struggle against injustice and humiliation to the Dalit by upper caste Hindus. He came out victoriously by giving all important rights to the oppressed in the Constitution of India. Inspite of all social hardness in his way, Dr. Ambedkar rose to the greatest heights and occupied important and prestigious position in India. In fact he came and lived like a sun and gave the light to Dalit who were living in darkness and state of slavery. He made them to realize their rights and safeguards which are incorporated in the Constitution of India. Dr. B.R. Ambedkar was very well known that unless and until the reservation in jobs, legislature and education was not accorded to Dalits, they would never be in a position to be equal partners in the administration of the country and they would remain oppressed forever. Dr. Ambedkar as a chief architect of the Constitution made social justice an integral part of the Constitution and incorporated humanist provisions to lift the level of the lowly scheduled castes to make democracy viable an equal footing for all.

BIBLIOGRAPHY

BIBLIOGRAPHY & REFERENCES

BOOKS:

1. Ahir D.C., *Dhamma As Told by Dr. Ambedkar*, Dalit Sahitya Prakashan, New Delhi, 1990.

2. Ahir D.C., *Dr. Ambedkar On The British Raj*, Blumoon Books New Delhi, 1997.

3. Ahir, D.C., *Dr. Ambedkar and the Indian Constitution*, D.K.Publishers & Distributors, Lucknow, 1997.

4. Ahir, D.C., *The Legacy of Dr. Ambedkar*, D.K. Publishers (P) Ltd., Delhi, 1990.

5. Ahluwalia, B.K. and Shahi Ahluwalia, *Dr. B.R. Ambedkar and Human Rights*, Manas Publications, New Delhi, 1990.

6. Ahluwalia, B.K. and Shashi Ahluwalia, *Architects of Swaraj*, Manas Publications, 1982, Delhi.

7. Allchin, Bridget and Raymond, *The Birth of Indian Civilization*, England, 1968.

8. Ambedkar, B.R., *Annihilation of Caste*, Bheem Publications, Jalandhar, 1935.

9. Ambedkar, B.R., *Pakistan or Partition of India*, Bombay, 1946.

10. Ambedkar, B.R., *What congress and Gandhi have done to the Untouchables*? Thacker and Co. Ltd., Bombay, 1945.

11. Ambedkar, B.R., *Who were the Shudras? How they came to be the Fourth Varna in the Indo-Aryan Society?* Bombay, 1946.

12. Anand Raj Mulk, *Untouchable*, Arnold Associates, New Delhi, 1981.

13. Antony M.J., *Dalit Rights- Landmark Judgment on SC/ST/Backward classes*, Indian Social Institute New Delhi, 1998.

14. Aurbindo, *The Secret of Vedas*, Pondichery, 1962.

15. Bailey, F.G., *Caste and the Economic Frontier*, Manchester, 1957.

16. Bains Ravinder Singh, *Reservation Policy and Anti Reservationists*, B.R. Publishing Corporation, Delhi 1994.

17. Baisantry, D.K., *Ambedkar, The Total Revolutionary*, New Delhi, 1991.

18. Bakshi S.R., *B.R. Ambedkar His Political and Social Ideology*, Deep & Deep Publications, New Delhi, 2000.

19. Baranthim K.S., *Foundations of Ambedkar Thought* (1990, Nagpur).

20. Barnett, Stephen Alan, *The Structural Position of a South Indian Caste*, Chicago, 1970.

21. Basu Durga Das, *Shorter Constitution of India*, Wadhwa Publishers, Nagpur, 2002.

22. Benjamin Joseph, *Scheduled Castes In Indian Politics And Society*, Ess Ess Publication, New Delhi, 1989.

23. Bergel, E.E., *Social Stratification*, New York, 1962.

24. Berreman, G., *Caste and other Inequalities*, Foklore Institute, Meerut, 1979.

25. Betellie, Andre, *Backward Classes in Contemporary India*, New Delhi, 1992.

26. Betellie, Andre, *Inequality and Social change*, Oxford University Press, New Delhi, 1972.

27. Bhambhri C.P., *Politics In India 1947-1987*, Vikas Publishing House, New Delhi, 1988.

28. Bhambhri C.P., *Politics In India 1992-93*, Shipra Publications, Delhi, 1993.

29. Bhatia K.L., *Judicial Activism And Social Change*, Deep & Deep Publications, New Delhi, 1990.

30. Bhatia, K.L., *Dr. B.R. Ambedkar Social Justice and the Indian Constitution*, New Delhi, 1994.

31. Bhatnagar, S., R.N. Soni and Raj Khanna, *Social Justice and equality in India*, New Delhi, 1987.

32. Bhatt Anil, *Development and Social Justice-Micro action by weaker Sections*, Sage Publications, New Delhi, 1989.

33. Bhattacharya, J.N., *Hindu Caste and Sects*, Calcutta, 1968.

34. Biswas Oncil, *Reservations: Legal Perspectives*, Blumoon Books, Delhi, 1998.

35. Biswas Oneil, *From Justice to Welfare*, Intellectual Publishing House, New Delhi, 1985.

36. Biswas S.K., *Father of The Constitution of India*, Orion Books, New Delhi, 1997.

37. Biswas S.K., *Hinduraj-Today-Yesterday-Tomorrow*, Orion Books, New Delhi, 1996.

38. Biswas S.K., *Towards a Casteless Society*, Orion Books, New Delhi, 1998.

39. Bose, N.K., *Class and Caste in Culture and Society is India*, Asia Publishing House, New York, 1967.

40. Bose, P.K., *Classes in a Rural Society: A sociological study of some Bengal Villages*, Delhi, 1984.

41. Breman, Jan, *Patronage and Exploitation*, Berkeley, 1974.

42. Briggs G.W., *The Chamars*, Low Price Publications, Delhi, 1997.

43. Chalam, K.S., *Relevance of Ambedkarism in India*, Rawat Publication, New Delhi, 1993.

44. Chanchreek K.L., *Dr. B.R.Ambedkar-Social Justice And Political Safeguards For Depressed Classes*, Shri Publication, New Delhi, 1995.

45. Chander Shailja, *Justice V.R. Krishna Iyer on Fundamental Rights and Directive Principles*, Deep & Deep Publication, New Delhi, 1998.

46. Chandna, R.C., *Spatial Dimensions of Scheduled Castes in India*, Intellectual Publishing House, New Delhi, 1989.

47. Chandra, Bipin, *Modern India*, New Delhi, 1977.

48. Charsley Simon R., *Challenging Untouchability- Dalit Initiative and Experience from Karnataka*, Sage Publications, New Delhi, 1998.

49. Chatterjee Sarajit Kumar, *The Scheduled Castes in India*, Gyan Publishing House, New Delhi, 1996.

50. Chaudhary S.N., *Changing Status of Depressed Castes in Contemporary India,* Daya Publishing House, Delhi, 1988.

51. Chaurasia, B.P., *Scheduled Castes and Scheduled Tribes in India*, Chugh Publications Allahabad, 1990.

52. Chentharassery, T.H.P., *History of the Indigenous Indians*, APH Publishing Corporation, New Delhi, 1998.

53. Childe, V. Gordon, *New Light on the Most Ancient East*, New York, 1953.

54. Chitkara M.G., *Hindutva*, APH Publishing Corporation, New Delhi, 1997.

55. Dahiwale S.D.M.; *Emerging Entrepreneurship Among Scheduled Castes of Contemporary India*, Concept Publishing Company, New Delhi, 1989.

56. Datta, N.K., *The Origin and Growth of Caste in India*, Vol. I, Calcutta, 1931.

57. Deb, P.C., *Rural Sociology: An Introduction*, New Delhi, 1981.

58. Debry, William, et al (Compilers), *Sources of Indian Tradition*, New York, 1958.

59. Desai, A.R., *Social Background of Indian Nationalism*, Bombay, 1959.

60. Devi Shakuntala, *Caste System in India*, Pointer Publishers, Jaipur, 1999.

61. Dicey A.V., *An Introduction to the Study of the Law of the Constitution*, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 1996.

62. Dr. Deb, W.C., *Crime Against Humanity*, New Delhi, 1993.

63. Dr. Gautam Munshilal, *Dr. Ambedkar on National Unity and Integration*, Thane, 1993.

64. Dumont, Louis, *Homo-Hierarchicus: The caste System and its Implications*, University of Chicago Press, Delhi, 1988.

65. Durkheim, Emile, *The Division of Labour*, Illinois, 1947.

66. Fermandes Lancy, *The Fractured Civilisation Caste Society in the Theories of Change*, Bharatiya Janwadi Aghadi, Mumbai, 1999.

67. Fuller C.J., *Caste Today*, Oxford University Press, Delhi, 1998.

68. Galanter, Mac, *Competing Equalities*, Delhi, 1984.

69. Ghatak, B.K., *Dr. Ambedkar's Thought*, APH Publishing Corporation, New Delhi, 1997.

70. Ghosh Ashish, *Dalits and Peasants – The Emerging Caste – Class Dynamics*, Gyan Sagar Publications, Delhi, 1999.

71. Ghosh G.K.; *Dalit Women*, A.P.H. Publishing Corporation, New Delhi, 1997.

72. Ghosh S.K., *Secularism in India – The Concept and Practice*, APH Publishing Corporation, New Delhi, 2001.

73. Ghosh, S.K., *Indian Democracy Derailed – Politics and Politicians*, APH Publishing Corporation, New Delhi, 1997.

74. Ghosh, S.K., *Protection of Minorities and Scheduled Castes*, Ashish Publishing House, New Delhi, 1980.

75. Ghurye, G.S., *Caste and Race in India*, Popular Prakashan, Bombay, 1969.

76. Ghurye, G.S., *Caste, Class and Occupation*, Popular Prakashan, Bombay, 1961.

77. Gore M.S., *The Social Context of an Ideology-Ambedkar's Political and Social Thought*, Sage Publications, New Delhi, 1993.

78. Gough, Kathleen, *Caste in a Tanjore Village*, Cambridge, 1960.

79. Gridhar, Gomango, *Constitutional Provisions for the Scheduled Caste and Scheduled Tribes*, Bombay, 1992.

80. Griffiths, Sir Parcival, *The British Impact on India*, London, 1959.

81. Gupta Shanti Swarup, *Varna Castes and Scheduled Castes*, Concept Publishing Company, New Delhi, 1991.

82. Hamton Rosalind, *Caste conflict and Ideology*, Hyderabad, 1985.

83. Hardgrave, R.L., *The Nadars of Tamil Nadu: The Political Culture of a Community in thange*, Bombay, 1968.

84. Harris, Marvin, *Culture, Man and nature*, New York, 1971.

85. Hasbnain N., *Weaker Sections- The Psycho-Social Perspective*, Gyan Publishing House, New Delhi, 1998.

86. Hooda Preet Sagar, *Contesting Reservations*, Rawat Publications, New Delhi, 2001.

87. Hutton, J.H., *Caste in India: Its Nature, Function and Origin*, Oxford University Press, Bombay, 1981.

88. Imam, Mohammed, *Minorities and the Law*, New Delhi, 1972.

89. Ishwari Prasad, *Reservation: Action for Social Equality*, New Delhi, 1986.

90. Iyer V.R. Krishna, *Social Justice and the Undome Vast*, B.R. Publishing Corporation, Delhi, 1991.

91. Jain M.P., *Indian Constitutional Law*, Wadhwa Publications, Nagpur, 2000.

92. Jain Nabhi Kumar, *Brochure on Reservation and Concessions*, Nabhi Publication, New Delhi, 2002.

93. Jain, P.C., *Scheduled Caste Women*, Rawat Publication, New Delhi, 1997.

94. Jaswal Paramjit, *Human Rights and the Law*, A.P.H. Publishing Corporation, New Delhi, 1996.

95. Jatava D.R., *B.R. Ambedkar - A vision of Man and Morals*, ABD publishers, Jaipur, 1999.

96. Jatava, D.R., *The Social Philosophy of Dr. B.R. Ambedkar*, Agra, 1965.

97. Jha Makhan, *Scheduled Castes Today*, M.D. Publications, New Delhi, 1997.

98. Jha Ram Kumar, *Commentary on Reservations for SC, ST, OBC and others*, Shail & Neeraj Law House, Patna, 2001.

99. Jiloha, R.C., *The Native Indians: In Search of Identity*, Blumoon Books, New Delhi, 1995.

100. Jogdand, P.G., *Dalit Women– Issues and Perspectives*, Gyan Publishing House, New Delhi, 1995.

101. Justice Iyer V.R. Krishna, *Dr. Ambedkar and The Dalit Future*, B.R. Publishing Corporation Delhi, 1990.

102. Justice Venugopal P., *Social Justice And Reservation*, Emerald Publishers Chennai, 1998.

103. Kable, N.D., *The Scheduled Castes*, Ashish Publishing House, Delhi, 1982.

104. Kachroo, J.L. and Kachroo, Vijay, *Society in India*, Delhi, 1981.

105. Kadam K.N., *Dr. B.R. Ambedkar: The Emancipator of the Oppressed*, Bombay, 1993.

106. Kadam, K.N., *Dr. Baba Saheb Ambedkar and the Significance of his Movement*, Popular Prakashan, Bombay, 1992.

107. Kamble, N.D., *Deprived Castes and their Struggle for Equality*, Ashish Publishing House, New Delhi, 1983.

108. Kananaikil Jose, *Scheduled Caste Converts in Search of Justice*, Indian Social Institute, New Delhi, 1993.

109. Karve, I., *Hindu Society: An Interpretation*, Poona, 1961.

110. Keer Dhananjay, *Mahatma Gandhi-Political Saint and unarmed Prophet*, Bombay Popular Prakashan, Bombay, 1973.

111. Keer, Dhananjay, *Dr. Ambedkar: Life and Mission*, Popular

Prakashan, Bombay, 1962.

112. Keer, Dhananjay, *Mahatma Jyotirao Phooley: Father of Social Revolution*, Bombay, 1965.

113. Kentkar, S.V., *History of Castes in India*, Low Price Publications, Delhi, 1998.

114. Ketkar Shridhar V., *Hinduism: its formation and Future*, New Delhi, 1988.

115. Ketkar Shridhar V., *History of Caste in India*, Delhi, 1979.

116. Khan Mumtaz Ali, *Human Rights and the Dalits*, Uppal Publishing House, New Delhi, 1995.

117. Khan Mumtaz Ali, *Identity Formation and Self Identity Among Harijan Elite*, Uppal Publishing House, New Delhi, 1994.

118. Khan Mumtaz Ali, *Reservation for Scheduled Castes*, Uppal Publishing House, New Delhi, 1994.

119. Khan Nazeer H., *B.R. Ambedkar on Federalism, Ethnicity and Gender Justice*, Deep & Deep Publication, New Delhi, 2001.

120. Khan Sheeraz Latif, *Justice Bhagwati on Fundamental Rights and Directive Principles*, Deep & Deep Publications, New Delhi, 1996.

121. Khan, M.Z., *Scheduled Castes - Their Socio-Economic Background and Development Aspirations*, Inter-India Publications, New Delhi, 1996.

122. Kirpal Viney, *Equality through Reservations*, Rawat Publication, New Delhi, 1999.

123. Kotani, H., *Caste System, Untouchability and the Depressed*, Manohar Publishers, Delhi, 1997.

124. Kothari Rajni, *Caste in Indian Politics*, Orient Longman, Hyderabad, 1995.

125. Kshirsagar R.K.,*Untouchability In India-Implementation of the Law And Abolition*, Deep & Deep Publications, New Delhi, 1989.

126. Kuber, W.N., *Dr. Ambedkar; A Critical Study*, People's Publishing House, New Delhi, 1979.

127. Kumar Arun, *Cultural and Educational Rights of the Minorities under Indian Constitution*, Deep & Deep Publications, New Delhi, 1985.

128. Kumar Vijay, *Scheduled Caste Panchayat Pradhans in India*, Ajanta Publications, Delhi, 1989.

129. Kunte, B.G. *Source Material on Dr. Ambedkar*, Vol. I, Bombay, 19 82.

130. Lal Pradyot, *Caste Vs. Caste: Turbulence In Indian Politics*, Ajanta Books International, Delhi, 1998.

131. Lal Sheo Kumar, *Extent of Untouchability and Pattern of Discrimination*, Mittal Publications, New Delhi, 1990.

132. Lal, A.K., *Dalit in Action*, Concept Publishing Company, New Delhi, 1997.

133. Leach, E.R., *Aspects of Castes in South India, Ceylon and North-West Pakistan,* London, 1962.

134. Limaye Madhu, *Manu, Gandhi and Ambedkar and other Essays*, Gyan Publishing House, New Delhi, 1994.

135. Lokhande, G.S., *Bhimrao Ramji Ambedkar - A Study in Social Democracy*, Intellectual Publishing House, New Delhi, 1977.

136. M. Rama Rao T.S., *Protective Discrimination and Education Planning*, Bombay, 1967.

137. Madholia Mata Din, *Supreme Court on Reservation*, Kamlesh Publications, Delhi, 1988.

138. Mahajan, V.D., *Constitutional Law of India*, Lucknow, 1991.

139. Majeed Akhtar, *Nation and Minorities-India's Plural Society and Its Constituents*, Kanishka Publishers, New Delhi, 2002.

140. Malik, S.C., *Indian Civilization: The Formative Period*, Simla, 1968.

141. Massey Jaames, *Dalits In India-Religion as a Source of Bondage or Liberation with Special Reference to Christians*, Manohar Publishers, New Delhi, 1995.

142. Massey James, *Roots of Dalit History Christianity, Theology and Spirituality*, ISPCK, Delhi, 1996.

143. Mathew Thomes, *Caste and Class Synamics*, Tech Publication, New Delhi, 1992.

144. Mc Crindle, J.W., *Ancient India as described by megasthenes and Arrian*, Calcutta, 1879.

145. Mc Kim, Marriott, *Village India*, Illinois, 1956.

146. Mehta S.M., *A Commentary on Indian Constitutional Law*, Deep & Deep Publications, New Delhi, 1990.

147. Mendelsohn Oliver, *The Untouchables – Subordination, Poverty and the State in modern India*, Cambridge University Press, New Delhi, 2000.

148. Michael, S.M., *Dalits in Modern India – Vision and Values*, Vistaar Publications, New Delhi, 1999.

149. Mishra Jitendra, *Equality Versus Justice -- The Problem of Reservation for Backward Classes*, Deep & Deep Publication, New Delhi, 1996.

150. Mishra Narayan, *Scheduled Castes Education Issues and Aspects*, Kalpar Publications Delhi, 2001.

151. Mishra Upendra, *Caste and Politics in India*, Uppal Publishing House, New Delhi, 1986.

152. Misra, R.G., *Reservation Policy and Personal Selection*, Uppal Publishing House, New Delhi, 1990.

153. Moore, Barrington Jr., *Social Origins of Dictatorship and Democracy* Boston, 1966.

154. Muralidharan V., *Educational Priorities and Dalit Society*, Kanishka Publishers, New Delhi, 1997.

155. Murdoch J., *Review of Caste in India*, Jaipur, 1977.

156. Nikam Shriram, *Destiny of Untouchables in India*, Deep & Deep Publications, New Delhi, 1998.

157. Omprakash S., *Development of the weaker sections-problems, Policies And Issues*, Uppal Publishing House, New Delhi, 1989

158. Omvedt Gail, *Dalit Visions– The anti-caste Movement and the construction of an Indian Identity*, Orient Longman, New Delhi, 1995.

159. Omvedt Gail, *Dalits and the Democratic Revolution*, Sage Publications, New Delhi, 1994.

160. Pal, R.M., *Human Rights of Dalits- Societal Violation*, Gyan Publishing House, New Delhi, 2001.

161. Panandiker V.A. Pai, *The Politics of Backwardness-Reservation Policy in India*, Konark Publishers, New Delhi, 1997.

162. Pandey J.N., *Constitutional Law of India*, Central Law Agency, Allahabad, 1997.

163. Pandey Jitendra, *Civil Liberty Under Indian Constitution*, Deep & Deep Publications, New Delhi, 1995

164. Pandhey, K.S., *Reservation Policy in India*, Ashish Publishing House, New Delhi, 1988.

165. Pandy Rajendra, *Minorities in India – Protection and Welfare*, APH Publishing Corporation, New Delhi, 1997.

166. Panikkar, K.M., *Caste and Democracy*, London, 1933.

167. Parkash Prem, *Ambedkar-Politics And Scheduled Castes*, Ashish Publishing House, New Delhi, 1993.

168. Parmaji, Sabinkar, *Caste Reservation and Performance*, Warangal, 1985.

169. Parvathamma C., *New Horizons and Scheduled Castes*, Ashish Publishing House, New Delhi, 1984.

170. Parvathamma C., *Scheduled Castes at The Cross Roads*, Ashish Publishing House, New Delhi, 1989.

171. Parvathamma, C., *Scheduled Castes and Tribes - A Socio-economic Survey*, Ashish Publishing House, New Delhi, 1984.

172. Paswan Sanjay, *Encyclopaedia of Dalits in India*, Kalpaz Publications, Delhi, 2002.

173. Patil Sharad, *Dasa-Sudra Slavery*, Sugama Prakashan, Pune, 1991.

174. Piggott, Stuart, *Pre-historic India*, Maryland, 1950.

175. Pinto Ambrose, *Dalits: Assertion for Identity*, Indian social Institute, New Delhi, 1999.

176. Prabhu, H. Pandharinath, *Hindu Social Organizations*, Bombay, 1979.

177. Prakasam Gana, *Social Separation– Scheduled Castes and the Caste System*, Rawat Publications, New Delhi, 1998.

178. Prakash Nirupama, *Scheduled Castes– Socio-economic Changes*, Chugh Publications, Allahabad, 1989.

179. Prakash Om, *Caste Hindu and Scheduled Caste Children in Rural India,* Ess Ess Publications, New Delhi, 1985.

180. Prasad Anirudh, *Reservation Policy and Practice in India,* Deep & Deep Publications, New Delhi, 1991.

181. Prasad Anirudh, *Reservational Justice to Other Backward Classes (OBCs)*, Deep & Deep Publications, New Delhi, 1997.

182. Prasad Anirudh, *Social Engineering and Constitutional Protection of Weaker Sections in India*, Deep & Deep Publications, New Delhi, 1980.

183. Pundhir J.K., *Changing Patterns of Scheduled Castes*, Rawat Publications, New Delhi, 1997.

184. Purohit B.D., *Handbook of Reservation For Scheduled Castes & Scheduled Tribes,* Jainsons Publications, New Delhi, 1990.

185. Rajasekhariah, A.M., *Dr. B.R. Ambedkar: The Quest for Social Justice*, Uppal Publishing House, New Delhi, 1989.

186. Rao Hemlata, *Scheduled Castes and Tribes*, Ashish Publishing House, New Delhi, 1994.

187. Rayappa P.Hanumantha, *Backwardness and Welfare of Scheduled Castes And Scheduled Tribes In India,* Ashish Publishing House, New Delhi, 1986.

188. Reddy G.B., *Judicial Activism In India,* Gogia Law Agency, Hyderabad, 2001.

189. Risley, H.H., *Tribes and Castes*, Vol. II, Calcutta, 1891.

190. Robb Peter, *Dalit Movements and the Meaning of Labour in India*, Oxford University Press, Delhi, 1996.

191. Rose, H.A., *Tribes and Castes,* Vol. I, Lahore, 1991.

192. Roy Ramashray, *Dalits Development and Democracy*, Shipra Publications, Delhi, 1999.

193. Sahlin, Marshal D., *Tribesmen*, New Jersey, 1968.

194. Saksena, H.S., *Safeguards for Scheduled Caste and Tribes – Founding Father's View*, Uppal Publishing House, New Delhi, 1981.

195. Salvanathan S., *Status of Scheduled Castes*, Ashish Publishing House, New Delhi, 1989.

196. Sangwan Om Prakash, *Dalit Society and the Challenge of Development*, Commonwealth Publishers, New Delhi, 1996.

197. Sangwan Om Prakash, *Social System and the Dalit Identity*, Commonwealth Publishers, New Delhi, 1996.

198. Sastri, K.A. Nilakanta, *Development of Religion in South India*, Bombay, 1963.

199. Schoebel C.L., *Historic des origins et du development des caste de Inde*, Paris, 1884.

200. Seervai H.M., *Constitutional Law of India*, Universal Book Traders, Delhi 2002.

201. Seervai, H.M., *Constitutional Law of India*, Vol. I, Bombay, 1983.

202. Senart, Emile, *Caste in India*, Delhi, 1975.

203. Service, Elman R., *Origins of State and Civilization: The Process of cultural Evolution*, New York, 1975.

204. Shabbir, M., *B.R. Ambedkar: Study in Law and Society*, Rawat Publisher, New Delhi, 1997.

205. Shah Ghanshyam, *Caste Associations and Political Process in*

Gujarat, Bombay, 1975.

206. Shah Ghanshyam, *Caste, Caste- Conflict and Reservation*, Delhi, 1985.

207. Sharma Anuradha, *Caste in Rural India*, Rajat Publications, Delhi, 1998.

208. Sharma R.N., *Fundamental Rights, Liberty And Social Order*, Deep & Deep Publications, New Delhi, 1992.

209. Sharma Satish Kumar, *The Chamar Artisans– Industrialization Skills and Social Mobility*, B.R. Publishing Corporation, New Delhi, 1986.

210. Sharma Sudesh Kumar, *Distributive Justice Under Indian Constitution*, Deep & Deep Publications, New Delhi, 1989.

211. Sharma, B.A.V., *Reservation Policy in India*, Light & Life Publishers, New Delhi, 1982.

212. Sharma, B.R., *Socio-economic Justice under Indian Constitution*, New Delhi, 1984.

213. Sharma, C.L., *Social Mobility among Scheduled Castes*, M.D. Publications Pvt. Ltd., New Delhi, 1996.

214. Sharma, K.L., *Review of Caste in India*, Delhi, 1977.

215. Sharma, K.L., *The Changing Rural Stratification system*, Delhi, 1974.

216. Sharma, O.P., *Reservation – A Gimmick*, Kar Kripa Publishers, New Delhi, 1994.

217. Sharma, R.N., *Society and Culture in India*, Meerut, 1981.

218. Sharma, R.S., *Sudras in Ancient India*, Motilal Banarsidass Publishers Pvt. Ltd., Delhi, 1990.

219. Sharma, S.P., *Reservations – Bane or Boon*, Northern Book Centre, New Delhi, 1999.

220. Shourie, Arun, *Falling over Backwards – An Essay on Reservation and on Judicial Populism*, Asas Publication, New Delhi, 2006.

221. Shukla Nigamendra, *The Scheduled Castes And The Scheduled Tribes (Prevention of Atrocities) Act 1989*,Modern Law Publications Allahabad 2002.

222. Shukla, V.N., *Constitution of India*, Lucknow, 1992.

223. Singh Gopal, *Reservation Politics In India – Mandalisation of the Society*, Deep & Deep Publications, New Delhi, 1995.

224. Singh Mahender, *Dalit In India*, Reference Press, New Delhi, 2003.

225. Singh Shyama Nand, *Reservation problems and Prospects*, Uppal Publishing House, New Delhi, 1991.

226. Singh Soran, *Scheduled Castes of India – Dimensions of Social Change*, Gyan Publishing House, Delhi, 1987.

227. Singh, S.N., *Reservation Policy for Backward Classes*, Rawat Publications, New Delhi, 1996.

228. Sinha, Sachchidanand, *Caste System: Myth, Reality and*

Challenge, Intellectual Publishing House, Delhi, 1982.

229. Srinivas, M.N., *Castes in Modern India and Other Essays*, Bombay, 1962.

230. Srinivas, M.N., *Village Structure in North-Kerala, in India's Villages*, Bombay, 1960.

231. Stein, Burton, *Integration of the Agrarian System of South India*, London, 1969.

232. Sunderraj Victor, *Scheduled Castes of Rural India : Problems and Prospects*, A.P.H. Publishing Corporation, New Delhi, 2000.

233. Teltumbde Anand, *Ambedkar in And for the Post-Ambedkar Dalit Movements*, Sugama Prakashan Pune, 1997.

234. Thakur Devendra, *Self-Employment Pattern of Scheduled Castes*, Deep & Deep Publications, New Delhi, 1992.

235. Trilok Nath, *Politics of Depressed class*, Delhi, 1987.

236. Tripathy Rebati Ballav, *Dalits : A Sub-Human Society*, Ashish Publishing House, New Delhi, 1994.

237. Trivedi Harshad R., *Scheduled Castes Quest For Land And Social Equality*, Concept Publishing Company, New Delhi, 1996.

238. Upadhyay H.C., *Status of Scheduled Tribes in India*, Anmol Publications, New Delhi, 1999.

239. Vakil A.K., *Gandhi – Ambedkar Dispute*, Ashish Publishing House, New Delhi, 1991.

240. Vakil A.K., *Reservation Policy And Scheduled Castes In India*, Ashish Publishing House, New Delhi, 1985.

241. Verma, K.K., *Changing Role of Caste Associations*, Delhi, 1979.

242. Wad, S.B. (Justice), *Caste and the Law in India*, Delhi, 1984.

243. Wankhede, G.G., *Social Mobility and Scheduled Castes*, Rawat Publications, New Delhi, 1999.

244. Wasson, R., *Grodon, Soma: Devine Mushroom of Immorality*, Italy, 1968.

245. Webster Jone C.B., *Religion and Dalit Liberation – An Examination of Perspectives*, Manohar Publications, New Delhi, 1999.

246. Wilson, J., *Indian Caste*, Vol. I, Bombay, 1977.

247. Yadav, C.P., *Encyclopaedia of Scheduled Castes and Scheduled Tribes*, Anmol Publications Pvt. Ltd., New Delhi, 2000.

248. Yadav, S.K., *Education of Scheduled Castes*, Commonwealth Publishers, New Delhi, 1991.

249. Zelliot Eleanor, *From Untouchables to Dalit- Essays on the Ambedkar Movement*, Manohar Publishers, New Delhi, 1996.

ARTICLES:

1. Abraham Abu: "Between Manu and Mayawati", *The Hindustan Times*, April 10, 1994.

2. Agarwal, S.K., Protective Discrimination and Backward Classes in India, *Minorities and the Law,* 1972.

3. Anand, C.L., "Reservation versus Indication of Source; Judicial Activism and Preferential Treatment", *Civil and Military Law Journal*, vol. 24, No. I, 1988.

4. Baig, M.A.A., "Reservation in Public Employment and Judicial Process", *SCJ*, Vol. 3, 1989.

5. Berreman, G.D., Caste in India and United States, *American Journal of sociology*, 1960.

6. Buch, M.N. : "Caste Aspersion", *The Sunday Hindustan Times Magazine*, 24 March 1993.

7. Dr. Shabbir, Mohammad, "Dr. B.R. Ambedkar : Massiah of Depressed Classes", *AMU News and Views*, 1994.

8. Dr. Shabbir, Mohammad, Dr. Khan N. Ephroz and Z.A. Khan: "Legal Safeguards to Scheduled Caste and Scheduled Tribes: An Appraisal" *SCJ*, Vol. 3, Part 2, 1994.

9. Ghouse, Mohammad, Judicial Control of Protective Discrimination Vol. 11, *Journal of Indian Law Institute*, 1959.

10. Kothari, R., "Essence of Mandal Report", *Mainstream*, Vol. XXVII, No. 50, October, 1990.

11. Limaye, Madhu, 'Centre's Reservation Statement' *The Hindu*, 16 September, 1993.

12. M.N.Buch, Caste Aspersion, *The Sunday Hindustan Times Magazine*, 24 March, 1993.

13. Majahan, R.K., "Dr. Ambedkar's views on Constitutional Vision : Caste System and Parliamentary Democracy", *SCJ*, Vol. 3, 1991.

14. Majumdar, S., Reservation and Class Dynamics, *Mainstream* Vol. XXVII No. 23 March, 1990.

15. Mander Harish : "Where Faith is a Matter of Caste", *Times of India*, 23 March, 1994.

16. Mehta, P.L. and M.G. Chitkara, "Need to Revamp Reservation Policy", *Civil & Military Law Journal*, Vol. 26, No. 3, 1990.

17. Menon, P.S.K., "Abolition of Untouchability and Removal of Social Disabilities, an Appraisal", *Yojana*, Vol. 37, No. 23, December 31, 1993.

18. Mishra Nishi : "Why Reservations?", *Mainstream*, Vol. XXVIII, No. 26, April, 1990.

19. Palkiwala Nani, A., Mandal Perpetuates Casteism, *Hindustan Times*, November 30, 1992.

20. Palkiwala, Nani A.: "Mandal Perpetuates Casteism", *The Hindustan Times*, 30 November 1992.

21. Pandnanabhan N. Anata, Caste based Reservation should be given up. *The Hindu*, May 3, 1994.

22. Revathi, R., Exclusion of Creamy Layer Sine Qua Non for Egalitarianism, *Lawyer*, Vol. 24, No. 11, 1993.

23. Shama, K.N. Varna and Jati in Indian Traditional Perspective, *Sociological Bulletin,* Vol. 39, Nos 1 & 2, March – September, 1990.

24. Sharma, S.S. : "Dr. Ambedkar – The Savior of Human Rights for Depressed Classes", *Civil & Military Law Journal,* Vol. 28, No. 4, 1992.

25. Singh J.K., Social Engineering Before the Indian Constitution. *Civil and Military Law Journal*, Vol. 27, No. 2, 1991.

26. Singh, Bakhshish, Law in India and Weaker Sections- A Judicial Perspective, *Justice and Social Order in India*, Edited by Ram Avtar Sharma, New Delhi, 1984.

27. Singh, R.P., Identification of Backward classes, *The Hindu*, 5 April, 1994.

28. Sinha S.K., Social Disharmony, *The Hindustan Times*, September 27, 1994.

29. Sinha, S.K., 'Reservation Politics', *The Hindustan Times*, September 26-27, 1994.

30. Tarkunde, V.M., Mandal case: A Judicious verdict, *Civil & Military Journal*, Vol. 28, No. 4, 1992.

31. Theordore Rajiv, Reservation Going Backward, *Rashtriya Sahara*, November, 1994.

32. Tondon, M.P. : "Property of Reservation Based on Prior Supreme Court Decision", *SCJ*, Vol. 2, 1992.

33. Tondon, M.P., Property of Reservation Based on Prior Supreme Court Decision, *SCJ*, Vol. 2, 1992.

34. Vibhute K.I., Dr. Babasaheb Ambedkar Social Justice and Constitutional Scheme and Spirits, *SCJ*, Vol. 2, 1993.

35. Vimla Begley, Lecture on the Indus Valley Civilization, *Houston Archeological Society,* 15 April, 1975.

DEBATES, REPORTS AND STATUTES

1. Constituent Assembly Debates.

2. Parliamentary Debates, 1951.

3. Reports of the Commission for Scheduled Castes and Scheduled Tribes.

4. Reports of the Commission for Backward Classes.

5. All India Reports

6. Supreme Court Reports

7. Census Report of India, 1981

8. Primary Census Abstract Scheduled Castes and Scheduled Tribes Population

9. Government of India Act, 1935

WRITING AND SPEECHES

1. Dr. Baba Saheb Ambedkar's Writing and Speeches **Vol. I - VII**

JOURNALS, PERIODICAL, MAGAZINES, STATUTES AND NEWSPAPERS:

1. AMU News and Views, Aligarh.
2. Indian Express, New Delhi.
3. Journal of the Indian Law Institute, New Delhi.
4. Onlooker, Bombay.
5. Statesman, New Delhi.
6. The Hindu, New Delhi.
7. The Hindustan Times, New Delhi.
8. Lawyer, November, 1993
9. Law Teller, 1993
10. The Times of India, New Delhi.
11. The Sunday Observer, Weekly, Bombay.
12. Dalit Voice, Monthly, Bangalore.
13. Rastriya Sahara, New Delhi.
14. Sunday, An Anand Bazar Publication; Calcutta.
15. Supreme Court Journal, New Delhi.
16. Yojana - Planning Commission Magazine, New Delhi.

Ph.D. Thesis and Master Dissertation (LLM)

- Mohd. Taj, Caste Society, Social Justice and The Constitution of India: Dr B.R. Ambedkar's Perspective Ph.D. Thesis submitted in Department of Law, Lucknow, University , Lucknow. (2005.)

- Khan S, Reservation policy: Social Justice An empirical study of Scheduled Castes and Scheduled Tribes in Three Districts of U.P. with special reference to Dr. B.R. Ambedkar, Ph.D. Submitted in the Department of Law, A.M.U. Aligarh, (2000).

- Mohd. Taj, Caste system in Hindu Society, Principle of Social Justice and the Constitution of India: Dr. Ambedkar perspective. Dissertation submitted in Department of law, A.M.U. Aligarh (1995)

- Khan S, Equality Hindu and Muslim Social order and Doctrine of Protective Discrimination under the Constitution with reference to Dr. B. R. Ambedkar, Dissertation submitted in the Department of Law, A.M. U. Aligarh (1994).

CASE - LAW

1. A Periakaruppan *Vs.* State of Tamil Nadu, *AIR* 1971, SC 2303.

2. A.B.S.K. Sangh (Rly) *Vs.* Union of India, *AIR* 1981 SC 298.

3. A.P. State Backward Class Welfare Association (Registered) and etc. *Vs.* The State of Andhra Pradesh Backward Classes Welfare Department, *AIR* 1995 Andhra Pradesh 248.

4. All Saints High School *Vs.* State of Andhra Pradesh, *AIR* 1980 SC 1042.

5. Amar Salyam *Vs.* State of Bihar, AIR, 2004 Pat, 83.

6. Anil Kumar Gupta *Vs.* State of Uttar Pradesh (1995) 5 SCC 173.

7. Arti Roy Choudhary *Vs.* Union of India *AIR* 1974 SC 532.

8. Arti *Vs.* State of Jammu and Kashmir, *AIR* 1981, SC 1009.

9. Ashok Kumar Thakur *Vs.* Union of India and others, Frontline, The Hindu Publication, May 9, 2008.

10. Auditor General of India, Gyan Prakash *Vs.* K.S. Jaganathan (1986) 2 SCC 246.

11. Banmali Das *Vs.* Pakhu Bhandari, *AIR* 1951, Calcutta, 167.

12. C.A. Rajendran *Vs.* Union of India and Others, *AIR*, 1968 SC, 507.

13. Chandigarh Administration *Vs.* Surender Kaur, AIR, 2004 SC. 992.

14. Citralekha *Vs.* State of Mysore, *AIR* 1964 SC 1823.

15. Comptroller & Auditor General of India and Others *Vs.* Mohan Lal Mehrotra and Others, (1992) 1 SCC 20.

16. D.A.V. College Batinda *Vs.* State of Punjab, *AIR* 1971 SC 1731.

17. D.N. Chanchala etc *Vs.* The State of Maysore and Others, *AIR* 1971 SC 1762.

18. Deepak Sibal *Vs.* Punjab University, *AIR* 1989, SC 903.

19. Devadasan *Vs.* Union of India, *AIR* 1964 SC 179.

20. Dileep Domodran *Vs.* Secretary to Government, Education Department, Hyderabad, *AIR* 1991, Andhra Pradesh, 195.

21. Dr. A.N. Thomas and etc. *Vs.* Union of India and Others, *AIR* 2000 Kerala 325.

22. Dr. Chakradhar Paswan *Vs.* State of Bihar, *AIR* 1988 SC 959.

23. Dr. R. Uma Devi *Vs.* The Principal Kurnool Medical College, Kurnool and Others, *AIR* 1993 Andhra Pradesh 38.

24. General Manager Southern Railway *Vs.* Rangachari, *AIR* 1962, SC 36.

25. Hindi Hitrak Shak Samiti and other *Vs.* Union of India and Others, *AIR* 1990 SC 851.

26. Indira Sawhney *Vs.* Union of India (The Mandal Case) *AIR* 1993 SC 477.

27. Jagdev Singh *Vs.* Pratap Singh, *AIR* 1965 SC 183.

28. Jagwant Kaur Kasar Singh Dany and Other *Vs.* State of Bombay, *AIR* 1952 Bombay, 461.

29. Jai Singh *Vs.* Union of India, *AIR* 1993, Rajasthan, 177.

30. Janaki Prasad *Vs.* State of Jammu & Kashmir, *AIR* 1973 SC 930.

31. Jatinder Pal Singh and Others *Vs.* State of Punjab, *AIR* 2000 SC 609.

32. K.C. Vasanth Kumar and Another *Vs.* State of Karnataka, *AIR* 1985 SC 1495.

33. K.C. Vasanth Kumar *Vs.* Karnataka, *AIR* 1985 SC 1495.

34. Kala Ram *Vs.* State of Punjab and others, *AIR* 1995 Punjab and Haryana 98.

35. Kesavananda Bharti Sripadagalvaru and Others *Vs.* State of Kerala, *AIR* 1973 SC 1461.

36. Kuldeep Kumar Gupta and Others *Vs.* Himachal Pradesh Electricity Board and Others, *AIR* 2001 SC 308.

37. Kumari K.S. Jayasree and Others *Vs.* The State of Kerala, *AIR* 1976 SC 2381.

38. M. Shree Devi *Vs.* University of Medical Sciences, AP, (J.T. 2000(8) SC 314).

39. M.R. Balaji *Vs.* State of Mysore, *AIR* 1963 SC 649.

40. Managing Board M.T.M.V. *Vs.* State of Bihar, *AIR* 1984 SC 1757.

41. Minerva Mills *Vs.* Union of India, *AIR* 1980 SC 1789.

42. Minor P. Rajendran *Vs.* State of Madras and Others, 1968(2) SCR 786.

43. Miss Nishi Maghu etc. *Vs.* State of Jammu and Kashmir and Others, *AIR* 1980 SC 1975.

44. Narsimha Rao *Vs.* State of Andra Pradesh, *AIR* 1970 SC 422.

45. P & T Scheduled Caste/Tribe Employees' Welfare Association (Regd.) and Other *Vs.* Union of India and Others, *AIR* 1989 SC 139.

46. People's Union for Democratic Rights *Vs.* Union of India, *AIR* SC 1473 also called as Asiad Project Worker's Case.

47. S.B.I. SC/ST Employers Welfare Association *Vs.* State Bank of India (1996) 4 SCC 403.

48. S.H.Devi *Vs.* S.G. Swamy, 2005 (2) SCC 244.

49. Sadhana Devi *Vs.* State of U.P. AIR, 1997 SC. 1120

50. Smt. Chetana Dilip Motghare *Vs.* Bhide Girls *Education* Society, Nagpur and Others, *AIR* 1994 SC 1917.

51. Smt. D. Neelima *Vs.* The Dean of P.G. Studies, A.P. Agricultural University Hyderabad and Others *AIR* 1993, Andhra Pradesh 229.

52. State of A.P. *Vs.* U.S.V. Balaram, *AIR* 1972 SC 1375.

53. State of Andhra Pradesh *Vs.* P. Sagar, *AIR* 1968 SC 1379.

54. State of Bihar and Another *Vs.* Bal Mukund Sah and Others, *AIR* 2000 SC 1296.

55. State of Bombay *Vs.* Bombay Education Society, *AIR* 1954 SC 561.

56. State of Kerala *Vs.* N.M. Thomas, *AIR* 1976 SC 490.

57. State of Kerala *Vs.* Rey Mother Provincial, *AIR* 1970 SC 2079.

58. State of Madras *Vs.* C.R.I. Srinivasan, *SCR*, 1951.

59. State of Madras *Vs.* Champakam Dorairajan, *AIR* 1951 SC 226.

60. State of Madras *Vs.* Champakam Dorairajan, *AIR* 1951 SC 226.

61. State of Punjab *Vs.* Hiralal, (1970) 3 SCC 567.

62. Subhash Chandra *Vs.* State of Uttar Pradesh, *AIR* 1975 SC 563.

63. Trilokinath *Vs.* State of Jammu & Kashmir, *AIR* 1969 SC 1.

64. Union of India and Others *Vs.* Rajiv Yadav IAS and Others, *AIR* 199 SC 14.

65. Union of India *Vs.* Brijlal Thakur, *AIR* 1997 SC 2101.

66. V.V.Giri *Vs.* D.S. Dora, *AIR* 1959 SC 1318.

67. Valsamma Paul *Vs.* Cochin University, AIR, 1996, SC. 1011.